

Sec. 36-1. - Blocking or impeding street and sidewalk access.

- (a) *Purpose and intent.* The city has the general authority and control over all public streets, sidewalks, and other ways of public passage within its corporate limits, except those ways of public passage that are owned or maintained by the State of North Carolina. The city has the duty to keep such streets, sidewalks, and other ways of public passage open for travel and free from unnecessary obstructions. G.S. 160A-296. This ordinance prohibits actions that block or impede the safe passage of pedestrians and vehicles on public sidewalks and streets.
- (b) *Definitions.* The following words, terms, and phrases when used in this section shall have the meanings set forth in this subsection, unless the context of their usage clearly indicates another meaning:
- (1) *Block* means to unreasonably obstruct passage on a sidewalk or entrance or exit to a building.
 - (2) *Impede* means to render the use of a street unreasonably difficult or dangerous, including the following actions:
 - i. Weaving or darting through, around, and in between multiple occupied vehicles, whether the vehicle is stopped or in travel, for a purpose other than passage to a sidewalk. This subsection (i) is meant to prohibit walking through a street parallel to the sidewalk but not meant to prohibit crossing lanes of a street to reach occupied vehicles when a stop light is red.
 - ii. Placing or throwing a tangible thing on or inside an occupied vehicle that is on the street, except if an occupant requests that the acting individual deliver the tangible thing to an occupant or consents to such exchange.
 - iii. Standing, sitting, or lying down on the portion of a traffic island that is less than six feet wide, except where using the traffic island to cross the street or during an emergency.
 - (3) *Sidewalk* means the part of a street improved for pedestrian traffic.
 - (4) *Street* means the entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular traffic. For purposes of this section the terms street and highway are synonymous.
 - (5) *Traffic island* means a raised portion of the street in between lanes of traffic intended to separate lines of traffic or guide traffic, not to hold people or provide pedestrian refuge. A traffic island may be commonly called a median. For the purpose of this section, a traffic island is any raised part of the street meant to separate lanes of traffic that is less than six feet in width. Width is measured as the length of the traffic in the direction of pedestrian travel if the pedestrian is traveling perpendicular to the street.

- (6) *Vehicle* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes, of this chapter bicycles shall be deemed vehicles.
- (c) It shall be unlawful for an individual to impede the use of a street or highway.
- (d) It shall be unlawful for an individual to block a sidewalk.
- (e) It shall be unlawful for an individual to block the entrance or exit to a building served by a sidewalk or street unless otherwise granted permission by the owner or tenant. Permission granted by the owner may be evidenced by oral or written confirmation of permission from the owner or tenant.
- (f) Nothing in this subsection shall be interpreted to prohibit the exchanging of objects into and out of vehicles where the vehicle is stopped or parked according to traffic laws and no blocking or impeding of a street or sidewalk occurs. Where an individual is engaged in lawful activity on the sidewalk and such activity evokes a response by a third party that is in violation of this section or any other ordinance or state law, the individual engaged in lawful activity shall not be in violation of this section.
- (g) This section shall not apply to actions taken by first responders; or to actions taken in response to an emergency or to prevent an accident.
- (h) This section shall not apply to persons or entities granted a permit by the city for purposes, including, but not limited to, under section 46-85 and following of this Code.
- (i) No action punishable under G.S. 20-174.1 shall be punishable under this section. This section shall only apply to public streets, sidewalks, and other ways of public passage within the city's corporate limits for which authority and control is not vested in the North Carolina Board of Transportation.
- (j) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in section 1-6.

(Ord. No. 19-0651, § 1, 6-6-19; Ord. No. 23-13, § 10, 3-2-23)

Sec. 36-2. - Urinating or defecating in public.

- (a) It shall be unlawful for any person to urinate or defecate on any public place, sidewalk, street, alleyway or right-of-way, or in any public building except in designated water closets or toilet facilities, or on any private property. Having the written permission of the owner or person in lawful possession shall constitute an affirmative defense to the charge of urinating or defecating on private property.
- (b) Penalty. A violation of this section by any person subjects the offender to a fine of up to \$200.00 and any other punishment authorized by law for a class 3 misdemeanor.

(Ord. No. 19-0651, § 1, 6-6-19)

Sec. 36-3. - Solicitation and distribution of items in public parking garages and public parking lots prohibited.

- (a) *Solicitation permitted.* Solicitation, where not otherwise prohibited herein or by state law, is allowed in the public spaces of Hendersonville.
- (b) *Purpose and intent.* It is the purpose of this section to provide for the health, safety and welfare of the residents of the city through the proper management of the city's municipally owned parking garages and parking lots. The city is authorized to operate a parking enterprise to furnish parking services to the city and its citizens.
 - (1) The city council finds that municipal owned or operated parking garages and parking lots are not traditional public forums for First Amendment purposes and that the city may regulate conduct and use of the parking garages and parking lots through adequate and reasonable rules. The statutory authority is found in G.S. 160A-174 and 160A-312.
 - (2) The city finds it necessary to restrict certain activities, including solicitation and distribution within public parking garages and parking lots because of the increased potential for accidents in parking garages and parking lots, limited space for individuals walking to vehicles and engaging in transactions associated with solicitation and distribution, and due to the potential for individuals accessing their cars to feel a heightened level of intimidation when approached by a solicitor or distributor.
- (c) *Definitions.* The following words, terms, and phrases when used in this section shall have the meanings set forth in this subsection, unless the context of their usage clearly indicates another meaning:
 - (1) *Public parking garage and parking lot* mean lots, garages, or portions of lots or garages, owned or operated by the City of Hendersonville which have the sole purpose of providing vehicular parking. On-street parking, including diagonal on-street parking, is not considered a garages or lot. The word "deck" has the same meaning as the word "garage."
 - (2) *Enter or entry.* For the purpose of this section, entry into a parking garage or parking lot shall mean entry onto the paved parking portion whose sole intended purpose is the parking of vehicles.
- (d) *Offense.* It shall be unlawful to:
 - (1) Enter a public parking garage or parking lot for the purpose of soliciting for or distributing within the parking garage or parking lot any of the following: money, contributions, signatures, leaflets, or pamphlets for any purpose or use; and
 - (2) Engage in the intended solicitation or distribution.
- (e)

Exemption for sidewalks and landscaped areas through and adjacent to parking garages and parking lots.

The prohibition under this subsection does not restrict solicitation or distributions on public sidewalks or landscaped areas that run through or immediately adjacent to a public parking garage or lot where such sidewalk or landscaped area is a path for movement other than for the purpose of getting to and from a vehicle in the parking garage. However, any solicitation along such sidewalk or landscaped area shall be confined to the sidewalk or landscaped area, and no solicitor or distributor shall follow physically an individual off the sidewalk or landscaped area and through the publicly owned parking garage or parking lot where the individual has declined the solicitation or distribution.

- (f) *Other solicitation prohibited by state law.* This section shall not apply to any type of solicitation or distribution regulated, prohibited, or punishable under other applicable state law.
- (g) *Exceptions.* This section shall not apply to any parking garage or parking lot adjacent to or used as the designed parking for a polling place during the time when city owned property is used by the Henderson County Board of Election as a polling place. This section also shall not apply when an event is taking place within the public parking garage or parking lot due to a permit granted by the city.

(Ord. No. 19-0651, § 1, 6-6-15)

Sec. 36-4. - Harassment in public spaces prohibited.

(a) *Purpose and intent.*

- (1) The city is empowered, pursuant to G.S. 160A-174, to protect the health, safety and welfare of its citizens and to ensure the peace and dignity of the city. It is the intent of council in enacting this ordinance to recognize the rights of all citizens while at the same time protecting the coexistent rights for all citizens to enjoy safe and convenient travel in public spaces free from harassment. In the course of public hearings and debates regarding solicitation and safety in public spaces in Hendersonville, the city recognizes that the dangerous effects of harassment may occur in the commission of or completely separate from an act of solicitation, where such conduct occurs in public spaces and includes following a person or cornering a person for the purpose of intimidating that person.
- (2) The current state laws on stalking and harassment do not protect individuals who are harassed in public spaces where such harassment is confined to a single occasion but is also dangerous or intimidating. Such harassment causes intimidation and fear and may result in an interaction with dangerous or violent consequences. Free and safe passage on city sidewalks and streets is necessary. Therefore, the following ordinance intends to address harassment on sidewalks and streets by penalizing the following conduct.

(b) *Definitions.* The following definitions apply in this section:

- (1)

Public space means streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property.

(2) *Reasonable person* means a reasonable person in the same or similar circumstances.

(c) *Offense*. A person is guilty of harassment in a public space if the person:

(1) Knowingly and intentionally performs either of the following with no legitimate purpose:

- i. Following an individual in or about a public space with the intent of threatening, intimidating, or causing fear for personal safety; or
- ii. Surrounding an individual or intentionally and physically directing the individual's movement through or in a public space with the intent of threatening, intimidating, or causing fear for personal safety. This subsection includes crowding or cornering an individual with the intent of threatening, intimidating, or causing fear for personal safety and without that individual's consent as the individual is actively engaging or attempting to use an automated teller machine or parking meter and the individual must stand within the public space to access the automated teller machine or parking meter;

(2) The conduct described in subsection (c)(1)(i) or (ii) is directed at an individual in the individual's presence; and

(3) The person continues the conduct described in subsection (c)(1)(i) or (ii) after the individual to whom the conduct is directed has made a negative oral response or taken action that a reasonable person would understand as a negative response.

(d) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in section 1-6.

(Ord. No. 19-0651, § 1, 6-6-15; Ord. No. 23-13, § 10, 3-2-23)

Sec. 36-41. - Trespass.

- (a) *Prohibited generally.* It shall be unlawful for any person to commit a trespass within this municipality upon either public or private property.
- (b) *Specifically enumerated trespasses.* Without constituting any limitation upon the provisions of subsection (a) of this section, any of the following acts by any person shall be deemed included among those that constitute trespasses in violation of the provisions of subsection (a) of this section, and appropriate action may be taken under this section at any time, or from time to time, to prevent or punish any violations of this section. The enumerated acts shall include:
- (1) An entry upon the premises, or any part thereof, of another, including any public property or property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
 - (2) The pursuit of a course of conduct or action incidental to the making of an entry upon the land or property of another, including public property or the property of the city, in violation of a notice posted or exhibited at the main entrance to such premises, or at any point of approach or entry, or in violation of any notice, warning or protest, given orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
 - (3) A failure or refusal to depart from the premises of another, or from public property, or the property of the city, in case of being requested, either orally or in writing, by any owner or occupant thereof, or, in the case of municipal property, by any employee or agent of the city in charge of the premises or any lawfully constituted officer of the law.
- (c) *Penalty for violation of section.* In addition to any other remedy available, violation of this section is also a misdemeanor as provided in section 1-6.

(Code 1971, § 19-16; Ord. No. 23-13, § 11, 3-2-23)

Sec. 36-42. - Disturbing the peace.

Any person who shall be guilty of any loud and boisterous cursing and swearing, or loud and vulgar language, or who otherwise may be found disturbing the peace of the city in any street, house or lot elsewhere in the city shall be deemed guilty of a misdemeanor.

(Code 1971, § 19-18)

Sec. 36-45. - Fighting.

It shall be unlawful for any person to knowingly start a fight, or to fight, or to commit any assault or battery in any public place or in any public building in the city.

In addition to any other remedy available, violation of this section is also a misdemeanor as provided in section 1-6.

(Code 1971, § 19-22; Ord. No. 23-13, § 11, 3-2-23)

Sec. 50-22. - Solicitation in public rights-of-way prohibited.

(a) *Definitions.*

- (1) The following words and phrases, whenever used in this section, shall be construed as defined in this subsection:

Business means any type of products, goods, service performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

Employment means services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written or oral, express or implied.

Public right-of-way means land which is dedicated to the public use for sidewalk, street and highway purposes, or other transportation purposes.

Solicit means making any oral or written request, offer or enticement, or taking any action which indicates the availability of a person for employment or availability to provide services for compensation or which seeks to purchase or secure services or goods; the purchase or sale of goods; or a request for money or other property; or a contribution of money or other property. A solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

- (b) It is unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, median strips, sidewalks and driveways, to solicit, or attempt to solicit, employment, business, or contributions of money or other property from, or to distribute or attempt to distribute any material thing to, any person traveling in a motor vehicle along a public right-of-way, including, but not limited to public streets, highways or driveways. This provision does not apply to services rendered in connection with emergency repairs requested by the operator or passenger of a motor vehicle.

- (c) In addition to any other remedy available, violation of this section is also a misdemeanor as provided in section 1-6.

(Ord. No. 09-0105, § 1, 1-8-09; Ord. No. 23-13, § 26, 3-2-23)

