

## Chapter 219, STREETS AND SIDEWALKS

[HISTORY: Adopted by the Board of Trustees of the Village of Horseheads: Art. I, 8-3-1965 as Section 4.02 of the 1965 Code; Art. II, 8-3-1965 as Section 4.03 of the 1965 Code, amended in its entirety 7-9-1992 by L.L. No. 4-1992; Art. III, 7-9-1992 as L.L. No. 5-1992; Art. IV, 2-24-1994 as L.L. No. 2-1994. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Property maintenance -- See Ch. 179.

Outdoor sales -- See Ch. 192.

Vehicles and traffic -- See Ch. 235.

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## ARTICLE I, Street and Sidewalk Openings [Adopted 8-3-1965 as Section 4.02 of the 1965 Code]

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### § 219-1. Excavation of streets, curbs and sidewalks. [Amended in its entirety 10-17-1973]

- A. Permit to excavate. No person shall excavate, dig up, fill, grade, pave, alter drainage, lay or cut curbs, gutters, streets or sidewalks in the village without first obtaining a permit therefor from the Superintendent of the Department of Public Works or by appealing an adverse decision to the Board of Trustees.<sup>EN(1)</sup>
- B. Responsibility for one (1) year. It shall be a condition of any permit to excavate that the applicant shall be responsible for any excavation, grading, paving, filling, curbing, gutter, street and sidewalk damage or alteration, and shall immediately repair and restore the same following the completion of the work to its previous condition, and, further, shall maintain the curb, gutter, street and sidewalks, together with supporting the same, for a period of one (1) calendar year following the completion of the work.
- C. Application for permit. The Superintendent of the Department of Public Works is hereby directed and authorized to prepare an application form requiring the applicant to state the location of the work, its nature and extent, the approximate dates of start and completion, the persons who will be responsible for maintenance and restoration, the name and address of the liability insurance carrier, the policy identification number, the limits of coverage [which shall be not less than one million dollars (\$1,000,000.) for personal injury and one hundred thousand dollars (\$100,000.) for property damage] and such further the additional information as will be consistent with the intent of this Article. The applicant shall pay a fee

as set forth from time to time by resolution of the Board of Trustees.<sup>EN(2)</sup>

- D. Vehicles on streets and sidewalks. No person shall operate, propel, draw or allow to pass over any street, curb or sidewalk in the village any tractor, vehicle or machines having wheels or tracks from which extend lugs, spikes, ridges, flanges or other projections whereby the surface of the street, curb or sidewalk may be damaged, unless the wheels are protected by tires, rims, bands or coverings so that the wheels present a smooth surface in contact with street, curb or sidewalk. Studded automobile tires are expressly authorized for use from October 15 to the first of May.

**§ 219-2. Penalties for offenses.** <sup>EN(3)</sup>

Any person found guilty of a violation of this Article shall be punishable as provided in Chapter 1, General Provisions, Article II, General Penalty.

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**ARTICLE II, Snow and Ice Removal [Adopted 8-3-1965 as Section 4.03 of the 1965 Code; amended in its entirety 7-9-1992 by L.L. No. 4-1992]**

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**§ 219-3. Purpose.**

The purpose of this Article shall be to preserve the safety, public peace and good order in the village and to contribute to the safe conveyance of its people over the streets and sidewalks of the same.

**§ 219-4. Duty to keep sidewalks clear.**

It shall be the duty of the owner and occupant, jointly and severally, of every parcel of real estate adjoining a public sidewalk, whether the parcel of real estate is occupied by a structure or not, to keep such sidewalks adjoining such property free from snow, ice, dirt, debris or other obstruction for the full paved width of such sidewalks.

**§ 219-5. Time for removal.**

Snow and ice shall be removed within twenty-four (24) hours after the termination of the conditions producing such snow and ice. All other accumulations or obstructions shall be removed within twelve (12) hours of the time the same falls or is placed upon said sidewalk. Sidewalks in front of commercial enterprises and commercial parking lots shall be kept free and

clear of all such conditions or obstructions at all times.

**§ 219-6. Icing.**

In case snow and ice on any sidewalk shall be frozen so hard that it cannot be removed without injury to the sidewalk, it shall, within the time specified in § 219-5, be strewn and kept strewn with sand, sawdust, deicing agent or other suitable materials (excluding ashes) so as to be no longer dangerous to life and limb. As soon as practicable thereafter, the sidewalk shall be completely cleared of snow, ice, debris or other materials strewn thereon.

**§ 219-7. Action upon failure to comply.**

Whenever the owner or occupant of every parcel of real estate adjoining a public sidewalk fails to remove the snow, ice, dirt, debris or obstruction from said sidewalk within the time specified herein, or within four (4) hours after notice of the Street Superintendent or Code Enforcement Officer to remove the same, the Street Superintendent may remove and dispose of such items or materials from such sidewalk and notify the Village Clerk of the expense incurred in so doing by the amount of labor, equipment and materials used.

**§ 219-8. Costs of removal.**

The Village Clerk shall promptly present to the owner of each parcel a bill for such removal and disposition, certified by the Street Superintendent. If the same is not paid within thirty (30) days, the cost thereof shall be assessed against the property and become a lien thereon, collectible in the same manner as delinquent village taxes.

**§ 219-9. Snow, ice and water falling from buildings.**

The owner or occupants of buildings adjacent to public sidewalks shall prevent the falling of snow, ice or water off of or from such buildings upon said public sidewalks.

**§ 219-10. Deposits on streets.**

No person, firm or corporation shall deposit, throw, place or strew snow, ice, ash, stones, obstructions, dirt, rubbish, leaves, tree limbs, branches, grass clippings, yard waste or debris nor shall any of the same cause the same to be deposited, thrown, placed or strewn on any street, avenue or roadway within the village.

**§ 219-11. Deposit or accumulation on streets or private property.**

- A. No person, firm or corporation shall pile, gather up, plow up or in any way force any snow, ice, debris or other obstruction upon any street, avenue or roadway within the village or from one street, avenue or roadway upon any other street, avenue or roadway within the village.
- B. No person, firm or corporation shall pile, gather up, plow up or in any way force any snow, ice, debris or other obstruction upon any fire hydrant or within a three-foot radius thereof.
- C. No person, firm, corporation, property owner or occupant shall remove snow, ice, stones, ash, dirt, rubbish, leaves, tree limbs, branches, grass clippings, yard waste, debris or other obstructions from any parcel of real estate and place it upon another parcel of real estate without the express permission of the owner of the parcel of real estate upon which the same is to be placed.

**§ 219-12. Liability.**

The village assumes no liability for personal injury or property damage claims arising as a result of the failure of the owner or occupant to keep the public sidewalks clear. Liability for personal injury and/or property claims, settlements, verdicts, awards or judgments shall lie exclusively with the owner of the parcel of real property adjoining said sidewalk and/or occupants as tenants or otherwise if applicable. The undertaking of the village to take corrective or remedial action upon the default of the owner shall not relieve the owner of any responsibilities imposed by this Article or Article III of this chapter providing for sidewalk construction, maintenance and repair. The failure or omission by the village to undertake to provide services shall not create any liability attributable to the village. With respect to any dangerous conditions for which the village may be liable, it shall be entitled to receive the notice of defects required in accordance with Article IV of this chapter. Any duty on the part of the village pursuant to this Article is a general duty of the village. No person is authorized to create, imply, assume or infer a special duty by the village.

**§ 219-13. Penalties for offenses.** <sup>EN(4)</sup>

Any person, firm or corporation which shall violate any of the provisions of this Article shall be punishable as provided in Chapter 1, General Provisions, Article II, General Penalty.

**§ 219-14. Policy.**

It is the policy of the Village of Horseheads to take all steps reasonably necessary to provide for safe passage of pedestrians and vehicles upon the public walkways throughout the village. The right of pedestrians to lawfully use the sidewalks and walkways is absolutely paramount. When these public ways have not been maintained by property owners free from hazard, the village has been subjected to lawsuits. Proper maintenance of sidewalks and public ways within the village is vital to the protection of the public health, safety and welfare.

**§ 219-15. Duty to maintain and repair sidewalks.**

It shall be the duty of the owner of every parcel of real property adjoining a public sidewalk or steps, whether the parcel of real property is occupied by a structure or not, to keep such public sidewalk and/or steps adjoining such property maintained and repaired so as to afford safe passage of pedestrians and vehicles.

A. The following conditions shall constitute a defective sidewalk and/or step:

- (1) Unacceptable quality of surface, including but not limited to holes, depressions, breaks or protrusions.
- (2) Ridges or gaps between adjoining sidewalk blocks.
- (3) Differences in elevation of surface or of adjoining walk blocks.
- (4) Peeling or crumbling of the surface of the sidewalk.
- (5) Tilting of sidewalk or sidewalk blocks, except in case of handicapped ramps, driveway approaches or other similar situations.
- (6) Missing portions of surface or walk block.

B. Sidewalks in the above condition will be construed to be defective sidewalks, regardless of the type of sidewalk that exists. All defective sidewalks within the terms stated above are hereby declared to be a public nuisance.

**§ 219-16. Inspection; notice; hearing; order to repair.**

A. The Code Enforcement Officer or his or her designated agent shall have jurisdiction for the purpose of ordering the repair of a defective sidewalk and for taking remedial action towards placing the surface in good repair, even to the extent of replacing walk blocks if necessary.

- B. Upon receipt of information that a sidewalk may be defective, the Code Enforcement Officer shall make an inspection of the same and file a report with the Village Manager.
- C. If said report shall confirm the existence of a defective sidewalk as defined herein, the Code Enforcement Officer shall cause a notice to be served upon the owner of the parcel of real property adjoining said sidewalk, his or her executor, legal representative or agent. Such notice shall be served either personally or by first-class, prepaid mail addressed to the last known address of such owner or other person mentioned herein as said address is shown on the records of the Village Clerk.
- D. Such notice shall contain the following:
  - (1) A description of the premises upon which the sidewalk is located or which is adjoining said sidewalk.
  - (2) A statement of particulars in which the sidewalk is defective.
  - (3) Designation of the area in which repair or replacement is to be made.
  - (4) An order that repair or correction of the defective portion of sidewalk shall commence within thirty (30) days of personal service or within thirty-four (34) days of service of such notice by mail.
  - (5) A date, time and place for a hearing before the Village Manager relative to such defective sidewalk, which hearing shall be scheduled not less than ten (10) business days from the date of personal service or mailing of the written notice.
  - (6) A statement that, in the event of neglect or refusal to comply with the order to repair or replace the defective sidewalk, the Village Manager is authorized to provide that the sidewalk be secured and repaired and that all expenses thereof be assessed against the parcel of real property adjoining the sidewalk or step and to collect the cost of repairing and/or replacing the sidewalk, including related necessary or incidental expenses thereto.
- E. The Code Enforcement Office may exercise his or her discretion to extend time requirements for cause and in writing upon reasonable terms and conditions.

**§ 219-17. Costs of repair and/or replacement.**

The Village Manager or Village Clerk shall promptly present said owner with a bill for the aforesaid costs. If the same is not paid within thirty (30) days of such presentment, such costs shall be assessed against the parcel of real property adjoining the sidewalk or step and shall become a lien thereon, collectible in the same manner as delinquent village taxes.

**§ 219-18. Work and material requirements.**

- A. The aforesaid owner is responsible for the quality of the finished sidewalk. The Code Enforcement Officer will inspect the project from time to time and may require the owner to remove and replace new construction that does not meet construction standards as set forth herein and as may be modified from time to time.
- B. Before engaging upon sidewalk repair or construction, the contractor, on behalf of the owner, must first obtain a permit from the Code Enforcement Officer or his or her designated agent. Applications for the same are available at the Code Enforcement Officer's office.
- C. At the time of making application to the village for a permit to construct or repair a sidewalk, the owner or contractor shall pay to the village a permit fee in such amount as the Board of Trustees may from time to time determine. Such fee shall be waived in the case of sidewalk repair occurring under the auspices of the village's sidewalk repair program.
- D. No permit shall be issued to a contractor until he or she has filed with the Code Enforcement Officer a certificate of insurance establishing that he or she carries workers' compensation for all employees, together with public liability insurance coverage in an amount not less than one million dollars (\$1,000,000.), naming the Village of Horseheads an additional insured, one hundred thousand dollars (\$100,000.) for property damage and such other insurance coverages as the Village Manager may, by rule, regulation or directive, require.<sup>EN(5)</sup>
- E. No person, firm or corporation shall repair or construct a sidewalk unless the same shall be in accordance with the grade established and obtained from the Village Street Department or Code Enforcement Officer and unless the same is built to the construction standards as set forth herein and as may be modified from time to time.
- F. All replacement sidewalks shall be made of concrete.
- G. The Code Enforcement Officer shall prepare and file specifications, rules and regulations relative to the following items, which shall be filed with the Village Clerk. Said specifications, rules and regulations are subject to modification from time to time.
  - (1) The minimum and maximum dimensions for length, width and depth of sidewalk blocks in residential and business areas.
  - (2) Excavation and subbase requirements.
  - (3) Forming and reinforcing.
  - (4) Concrete mixture specifications.

- (5) Aggregate specifications.
- (6) Water quality.
- (7) Mixing of concrete ingredients.
- (8) Joints, finishing and protection of wet concrete.
- (9) Construction safeguards.
- (10) Any other matter or item that the Code Enforcement Officer deems necessary, appropriate or desirable given the nature and scope of the work to be performed and the location thereof.

H. A copy of any permit issued in accordance with this Article shall be maintained in the possession of the persons actually doing the work so the same is available for inspection by the Code Enforcement Officer or his or her representative on demand or upon inspection of the sidewalk.

#### **§ 219-19. Liability.**

The village assumes no liability for personal injury or property damage claims arising as a result of defects and/or disrepair of public sidewalks. Liability for personal injury and/or property claims, settlements, verdicts, awards or judgments shall lie exclusively with the owner of the parcel of real property adjoining said sidewalk and/or occupants as tenants or otherwise if applicable. The undertaking of the village to take corrective or remedial action upon the default of the owner shall not relieve the owner of any responsibilities imposed by this Article or Article II of this chapter, which prescribes rules and regulations for snow and ice removal from sidewalks. The failure or omission by the village to undertake to provide services shall not create any liability attributable to the village. With respect to any dangerous conditions for which the village may be liable, it shall be entitled to receive the notice of defects required in accordance with Article IV of this chapter. Any duty on the part of the village pursuant to this Article is a general duty of the village. No person is authorized to create, imply, assume or infer a special duty by the village.

#### **§ 219-20. Sidewalk repair program.**

The Village Board of Trustees recognizes that the repair of sidewalks can be costly and that it may impose a difficult economic hardship on the owner of real property to keep the public sidewalks in good repair. The village has heretofore established and maintained a cooperative public sidewalk repair program. The program has consisted, in major part, of a contribution by the village of a portion of the cost of repair and replacement of defective, dangerous public

sidewalks and steps. Said program may or may not be funded from time to time as determined by the Board of Trustees. Funding for this program shall occur, if at all, by establishment of the same as a line item on the budget of the Village of Horseheads adopted annually by the Board of Trustees. In the event that such program does exist and is funded, the owner may apply for and seek to qualify for participation in said program subject to the terms and conditions of the same. The lack of existence of such a program or funding thereof shall not negate or obviate the duty of such owner to repair and/or replace such sidewalk or portion thereof. Pursuant to the terms of such program, the cost of repair of sidewalks is borne fifty percent (50%) by the village as a whole and fifty percent (50%) by said owner. The owner shall be billed for and pay for his or her portion of construction upon acceptance of his or her application for participation in the project. The money funding the program shall be utilized on a first-come-first-served basis. Nevertheless, the Code Enforcement Officer shall have discretion to prioritize projects if he or she determines that the same constitutes a dangerous condition exposing pedestrians and users to immediate and grave risk of harm. Pursuant to the terms of the program, the work shall be performed by a contractor designated by the village for that purpose based upon a unit price determined by the Board of Trustees, set each year by resolution. Participation in the program shall not be available to tax-exempt entities, which shall pay the full cost of construction and/or repair.

**§ 219-21. Penalties for offenses.** EN(6)

Any person found guilty of a violation of this Article shall be punishable as provided in Chapter 1, General Provisions, Article II, General Penalty.

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**ARTICLE IV, Notification of Defects [Adopted 2-24-1994 as L.L. No. 2-1994]**

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**§ 219-22. Damages due to defective highways; notice required.**

No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees for damages or injuries to persons or property sustained by reason of any highway, bridge or culvert being defective, out-of-repair, unsafe, dangerous or obstructed unless written notice of, by the witness to, such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert was actually served upon the Village Clerk in accordance with § 219-25 hereof and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of. Under no circumstances shall the Village of Horseheads, its elective or appointive officials or employees be liable for damages caused to persons or property due to the defective conditions of village streets and highways in the absence of such prior written notice to the village of the existence of

such condition.

**§ 219-23. Damages due to certain property being defective; notice required.**

No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees for damages or injuries to persons or property sustained by reason of any defective parking lot, parking field, swimming or wading pool or area or equipment, playground or playground equipment, skating rink or park or park property, no matter where situated, being defective, out-of-repair, unsafe, dangerous or obstructed unless written notice of, by the witness to, the defective, unsafe, dangerous or obstructed condition of such parking lot, parking field, swimming or wading pool or area or pool equipment, playground or playground equipment, skating rink, park or park property was actually served upon the Village Clerk in accordance with § 219-25 hereof and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of. Under no circumstances shall the Village of Horseheads, its elective or appointive officials or employees be liable for injuries or damages to persons or property due to defective conditions of the aforesaid village property in the absence of such prior written notice to the village of the existence of the defective condition causing said injuries or damages.

**§ 219-24. Damages or injuries due to defective traffic signs, sidewalks, walkways, footpaths or bicycle pathways.**

No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees for injuries or damages to persons or property sustained by reason of any defect or obstruction whatsoever in its traffic signs, sidewalks, walkways, footpaths or bicycle pathways or for injuries or damages to persons or property sustained by reason of any defect or obstruction in its traffic signs, sidewalks, walkways, footpaths or bicycle pathways or in consequence of the existence of snow or ice upon any of its traffic signs, sidewalks, walkways, footpaths or bicycle pathways unless said traffic signs, sidewalks, walkways, footpaths or bicycle pathways, no matter where situated, have been constructed or are maintained by the Village of Horseheads pursuant to statute and written notice of, by the witness to, said defect or obstruction causing the injuries or damages was actually served upon the Village Clerk in accordance with § 219-25 hereof, nor shall any action be maintained for injuries or damages to persons or property sustained by reason of any defect or obstruction or in consequence of the existence of snow or ice unless such written notice thereof was actually served upon the Village Clerk in accordance with § 219-25 hereof and there was a failure or neglect to cause the particular defect to be remedied or the obstruction of the snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

**§ 219-25. Service of notice; contents.**

Service of written notice of any defect described in this Article shall be accomplished by personal service or service by registered or certified mail actually received by the village officer specified herein. The written notice must be made by the witness to the condition, defect or obstruction specified in this Article. The written notice must identify, with particularity, the specific nature and location of each condition, defect or obstruction complained of.

**§ 219-26. Legislative intent.**

- A. It is the intent of the Village Board, pursuant to the Municipal Home Rule Law of the State of New York, to supersede such portions of § 6-628 of the Village Law of the State of New York and § 50-e, Subdivision 4, of the General Municipal Law of the State of New York as stated in this section and fully set forth in §§ 219-22, 219-23, 219-24 and 219-25 of this Article.
- B. It is the intent of the Village Board to supersede that portion of § 6-628 of the Village Law of the State of New York with respect to the manner of service of notice of defects and obstructions as is more fully set forth in § 219-25 herein.
- C. It is further the intent of the Village Board to require, in addition to the need for prior written notice of defective, out-of-repair, unsafe, dangerous or obstructed highways, bridges or culverts or of a defect in or snow or ice upon any sidewalk or of defective, unsafe, dangerous or obstructed conditions of any street, highway, bridge, culvert, sidewalk or crosswalk in § 6-628 of the Village Law or § 50-e, Subdivision 4, of the General Municipal Law, as a condition precedent to the maintenance of a civil action for damages or injuries to person or property, that such prior written notice is additionally required for any defective, out-of-repair, unsafe, dangerous or obstructed property of the Village of Horseheads or any snow or ice condition upon such property as set forth more fully in §§ 219-22, 219-23 and 219-24 of this Article.
- D. It is further the intent of the Village Board to supersede that portion of § 4-402(g) of the Village Law with respect to giving notice of receipt of the written notice to the Village Board as is set forth in § 219-27 of this Article.

**§ 219-27. Records.**

The Village Clerk shall keep an indexed record, in a separate book, of all written notices which said Clerk shall receive pursuant to this Article, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist and the name and address of the

person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defect, condition or accumulation. The record of each notice shall be preserved for a period of five (5) years after the date it is received. The Village Clerk shall notify the Village Manager of any written notices received within ten (10) days or by the next meeting of the Village Board, whichever shall come sooner.

## **Endnotes**

### **1 (Popup - Popup)**

Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

### **2 (Popup - Popup)**

Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

### **3 (Popup - Popup)**

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### **5 (Popup - Popup)**

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### **6 (Popup - Popup)**

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