

TRANSPORTATION CODE

CHAPTER 316. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC  
CONVENIENCES AND AMENITIES OR FOR PRIVATE USES  
SUBCHAPTER A. USE OF MUNICIPAL STREETS AND SIDEWALKS FOR PUBLIC  
CONVENIENCES AND AMENITIES

Sec. 316.001. DEFINITIONS. In this subchapter:

(1) "Municipal street" means the entire width of a way held by a municipality in fee or by easement or dedication that has a part open for public use for vehicular travel. The term does not include a designated state or federal highway or road or a designated county road.

(2) "Roadway" means the portion of a municipal street that is improved, designed, or ordinarily used for vehicular travel. The term does not include a curb, berm, or shoulder.

(3) "Sidewalk" means the portion of a municipal street between the curb lines or lateral lines of a roadway and the adjacent property lines that is improved and designed for or is ordinarily used for pedestrian travel.

(4) "Sidewalk cafe" means an outdoor dining area that is located on a sidewalk and that contains removable tables, chairs, planters, or related appurtenances.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.002. PERMITTED IMPROVEMENTS OR FACILITIES ON MUNICIPAL STREET. (a) The governing body of a municipality may permit a person described by Subsection (b) to use property in the municipality on which a municipal street is located for the establishment or maintenance of:

(1) trees or decorative landscaping, including landscaping lighting, watering systems, or other accessories for the maintenance of the trees or landscaping;

(2) a sidewalk cafe that is:

(A) contiguous to a restaurant in which food preparation, sanitation, and related services for the cafe are performed; and

(B) open to the air, except for any canopy, and not enclosed by fixed walls;

(3) an ornamental gate, column, or other ornamental work denoting the entrance to a neighborhood or platted and recorded subdivision;

(4) a supportive or decorative column, arch, or other structural or decorative feature of a building that is:

(A) of historical value or of unusual architectural design, character, or significance; and

(B) 50 or more years old at the time of application for a permit for the establishment or maintenance of the feature; or

(5) an amenity for the convenience of the public in the use of the municipal streets for pedestrian or vehicular travel, including a transit bus shelter, drinking fountain, or bench.

(b) The governing body may grant permission under Subsection (a) only to:

(1) a person who owns the underlying fee title to the real property; or

(2) an entity that holds a lease of the property from or has written permission to use the property from a person who owns the underlying fee title to the real property.

(c) An ornamental work described by Subsection (a)(3) may display the name of the neighborhood or subdivision, but may not contain commercial advertising or other signs.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.003. FINDING REQUIRED. An improvement or facility described by Section 316.002(a) may not be established unless the governing body of the municipality, or a municipal official who is designated by ordinance to make the finding, finds that:

(1) the improvement or facility will not be located on, extend onto, or intrude on:

(A) the roadway; or

(B) a part of the sidewalk needed for pedestrian use;

(2) the improvement or facility will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the municipal street; and

(3) the design and location of the improvement or facility includes all reasonable planning to minimize potential injury or interference to the public in the use of the municipal

street.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.004. PERMIT PROGRAM. (a) A municipality by ordinance may establish a permit program under this subchapter.

(b) The governing body of the municipality shall include in the ordinance:

(1) provisions the governing body determines are necessary or desirable to protect, at the site of an applicant's proposed facility, the public, utility companies, and any person who has the right to use the municipal street;

(2) provisions that require:

(A) clearances between the facility or improvement and utility lines that comply with clearances from structures to utility lines required by a nationally recognized building code;

(B) a permit holder to provide a cash or surety bond in an amount approved by the municipality sufficient to cover the costs for the municipality or a public utility to remove the permit holder's facilities or improvements; and

(C) a permit holder to pay the costs to relocate a municipal or public utility facility or improvement in a municipal street associated with the installation of a facility or improvement of the permit holder; and

(3) a provision authorizing the municipality or a utility company or other person authorized by the municipality to remove, without liability, any part of a facility for which a permit has been issued if there is a lawful need for the site or for access to the site.

(c) The governing body may include in the ordinance:

(1) construction, maintenance, operation, and inspection requirements;

(2) public liability insurance requirements;

(3) a requirement that the applicant or permit holder pay for traffic and safety studies;

(4) provisions for conducting a public hearing on the issuance, renewal, or revocation of a permit, with notice and reporting expenses of the hearing to be paid by the applicant or permit holder;

(5) a requirement for indemnity agreements by abutting fee title land owners in the form of covenants that run with the title to the abutting land; or

(6) a provision that authorizes the governing body, at its discretion, to terminate the permit without notice to the permit holder.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.005. RENEWAL OF PRIOR PERMIT. The renewal of a permit issued before April 30, 1985, for an improvement or facility described by Section 316.002(a) must be renewed in the same manner as a permit issued under this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.006. USE OF MUNICIPAL MONEY OR EMPLOYEE FOR PERMITTED FACILITY. A municipality may use or permit the use of municipal money or an employee with respect to a facility operated under a permit issued under this subchapter only for inspections or removal.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.007. IMPROVEMENT OR FACILITY ESTABLISHED OR MAINTAINED BY MUNICIPALITY. (a) A municipality may establish or maintain, with municipal money, material, equipment, or personnel, an improvement or facility described by Section 316.002(a)(1) or (5) without a permit, regardless of whether the municipality establishes a permit program under this chapter.

(b) A municipality must make the finding required by Section 316.003 regarding an improvement or facility the municipality proposes to place on a municipal street.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.008. PUBLIC AND GOVERNMENTAL ACTIONS AND FUNCTIONS OF MUNICIPALITY. The following actions of a municipality are public and governmental actions and functions, are exercised for a public purpose, and are matters of public necessity:

(1) granting a permit authorized by this subchapter;

(2) permitting the use of a municipal street for a purpose authorized by Section 316.002 under a permit authorized by this subchapter; and

(3) establishing or maintaining, with municipal

money, material, equipment, or personnel, an improvement or facility described by Section 316.002(a)(1) or (5).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.009. RIGHT OF ABATEMENT. This chapter does not impair the right of a municipality or other person to abate an unlawful obstruction or use of a municipal street.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 316.010. POLITICAL SUBDIVISION NOT REQUIRED TO OBTAIN PERMIT. This chapter does not require a political subdivision of this state to obtain a permit to establish or maintain an improvement or facility authorized by other law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. USE OF STREETS AND SIDEWALKS FOR PRIVATE PURPOSE

Sec. 316.021. MUNICIPAL PERMISSION TO USE STREET OR SIDEWALK FOR PRIVATE PURPOSE. A municipality may permit and prescribe the consideration and terms for the use of a portion of a municipal street or sidewalk for a private purpose if the use does not:

(1) interfere with the public use of the street or sidewalk; or

(2) create a dangerous condition on the street or sidewalk.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.