

Statutory Requirements for Pleading and Proving an Ordinance

Note that subsection (a) of the following North Carolina General Statute requires an officer to provide the section number of the City Code, as well as the applicable section's caption or title, when issuing a citation or preparing an arrest warrant charging an individual with violation of a city ordinance.

Subsection (b) provides that only an original Code of Ordinances book, or an appropriately certified copy of an ordinance found in such a book or Council minutes, may be admitted into evidence. Therefore, if an officer has a trial set in which the defendant has been charged with violating a city ordinance, the officer should obtain a certified copy of the applicable ordinance from the Durham City Clerk's Office which is located on the second floor of City Hall. Otherwise, the officer will have to rely upon the Assistant District Attorney having available an original Code of Ordinances book for the City of Durham.

§ 160A-79. Pleading and proving city ordinances.

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

- (1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.
- (2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).
- (3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).
- (4) Copies of any official lists or schedules maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78. It shall be presumed that an ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in

accordance with G.S. 160A-77 or 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1917, c. 136, subch. 13, s. 14; C.S., s. 2825; 1959, c. 631; 1971, c. 698, s. 1; 1973, c. 426, s. 18; 1979, 2nd Sess., c. 1247, s. 10.)

Durham City Code Chapter 1, General Provisions

Note that the following ordinance, Durham City Code Sec. 1-9, must be read in conjunction with North Carolina General Statute 14-4, and to the extent they are contrary, the State law provisions will prevail. Therefore, the two laws read consistently together provide the following:

With the exception of parking and vehicle operation offenses, a violation of a city ordinance is a Class 3 misdemeanor, unless the particular ordinance proscribes a lesser penalty. Class 3 misdemeanors are punishable by a fine and/or maximum of 20 days imprisonment. The fine will generally be \$50.00. The fine may be greater than \$50.00 if the particular ordinance expressly provides for a higher penalty. In any event, the fine cannot exceed \$200.00.

Parking violations are not misdemeanors. Rather, the offender is subject only to a civil penalty.

Vehicle operation violations are infractions. Infractions are noncriminal offenses that are not punishable by imprisonment. The offender is subject to a maximum fine of \$50.00.

Sec. 1-9. General penalties; misdemeanor penalty; civil penalties for parking violations; vehicle operation violations; continuing violations; alternative remedies.

(a) *Misdemeanor penalty.* Except as provided in subsection (b) of this section, where no specific criminal penalty is provided therefor, whenever in any ordinance, any act is prohibited, or made or declared to be unlawful or a misdemeanor, or the doing of any act is required or the failure to do any act is declared to be prohibited, unlawful or a misdemeanor, each separate violation of such provision shall be a misdemeanor, for which the maximum fine shall be \$50.00 and for which the maximum imprisonment shall be 30 days. Unless provided otherwise, limits on criminal fines do not imply limits on noncriminal or other criminal remedies.

(b) *Civil penalties for parking violations.*

- (1) Whenever in any ordinance, any act of vehicle parking is prohibited or is made or declared unlawful, or the doing of any act of vehicle parking is required, or the failure to do any act of vehicle parking is declared to be unlawful, the violation of such provision shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender, or the registered owner of the vehicle, does not pay the penalty within ten days of the violation. The violations shall not be deemed criminal and no criminal penalty shall be imposed therefor.
- (2) Whenever in any ordinance, any act of vehicle parking is prohibited or made or declared to be unlawful, or the doing of any act of vehicle parking is required, or the failure to do any act of vehicle parking is prohibited or declared to be unlawful, whether the violation occurs on a street, or on a public vehicular area as defined in G.S. 20-4.01(32), or on any land or in any building owned by or leased to the city, or where the city operates a parking facility, it shall be prima facie evidence in any court that such vehicle was parked and operated at the time of the violation by the person in whose name such vehicle is then registered and licensed according to the records of the North Carolina Division of Motor Vehicles, or similar agency of any other state for vehicles not registered or licensed in this state, and such person in whose name such vehicle is then registered shall be subject to the same civil penalty provided by the applicable ordinance, to be recovered by the city in a civil action in the nature of debt if the civil penalty is not paid within ten days of such violation. The violations shall not be deemed criminal and no criminal penalty shall be imposed therefor.

(3) In addition to the above penalties, the city manager may immobilize by the use of wheel locks and tow and impound any vehicle which is illegally parked in violation of chapter 66, article IV, and charge a vehicle immobilization fee, as a civil penalty, of \$50.00, to be recovered by the city in a civil action in the nature of debt if the fee is not paid within ten days of the attachment of the wheel lock to the vehicle.

(4) Violations for which civil penalties may be imposed pursuant to this section 1-9(b) are not criminal, and no criminal penalty shall be imposed therefor.

(c) *Infractions for vehicle operation violations.* Whenever in any ordinance, any act of vehicle operation (except parking) is prohibited, or is made or declared to be unlawful, or whenever in any ordinance, the doing of any act of vehicle operation (except parking) is required or the failure to do any act of vehicle operation (except parking) is prohibited or made or declared to be unlawful, the violation of such provision shall constitute an infraction, and the person found responsible for such infraction shall pay a penalty not to exceed \$50.00, which shall be recovered as provided by law for the violation of infractions.

(d) *Continuing offenses.* Except as otherwise provided, each day's continuing violation of any ordinance shall be a separate and distinct offense for purposes of all remedies, including civil and criminal.

(e) *Enforcement alternatives.* Except as otherwise provided, violation of any ordinance may be enforced by one, all, or any combination of the remedies authorized.

(f) *Penalty not excuse.* The imposition or payment of a penalty, fine, or punishment shall not be construed to excuse any violation of any ordinance.

(g) *[Late payment charges.]* The city council has found that it is in the public interest to impose late payment charges on certain civil penalties because late payment charges may help ensure that the penalties are paid on time. The date of delinquency shall be the date described by the ordinance, resolution, or other legal authority establishing when the civil penalty is delinquent or past due. If an ordinance, resolution or other legal authority does not establish the date of delinquency, then the civil penalty shall be delinquent 60 days after it is payable. A rate of interest of eight percent simple interest per year shall be imposed on the following civil penalties from the date they become delinquent: all civil penalties, denominated as such, provided for by division 2 of article III of chapter 46 (fire prevention code); and article IV of chapter 46 (police and fire alarm systems).

(Code 1982, § 1-9; Ord. No. 7001, § 1, 6-26-1986; Ord. No. 10960, § 1, 11-4-1996; Ord. No. 13574, Pt. 1, 4-7-2008)

Charter references: Authority to enforce ordinances by fine, imprisonment or otherwise, § 8; fine for refusal to permit inspection to determine wasting of water, or for damage, etc., to waterworks, § 32; fine for violation of subdivision ordinance, § 97(1).

State law references: Violation of ordinance declared a misdemeanor, punishable by fine not exceeding \$500.00, G.S. 14-4; authority to impose fines and penalties, G.S. 160A-175; restrictions on ordinance-making power--where offense defined is identical to state or federal statute, G.S. 160A-174; authority to provide for civil penalties and equitable remedy, G.S. 160A-175.

Durham City Code Chapter 6, Animals

Sec. 6-1. County ordinances applicable within the corporate limits of the city.

Editor's note—The Durham County Animal Control Ordinance, codified as chapter 4 of the Durham County Code of Ordinances, as amended from time to time, applies in the portions of the city that are in Durham County. Nothing in this resolution is intended to make section 1-9 (General penalties, etc.) of the Durham City Code apply with respect to violations of the Durham County Animal Control Ordinance. The Wake County Animal Control Ordinance, codified as section 2-3-1 through section 2-3-40 of the Wake County Code of Ordinances, as amended from time to time, applies in the portions of the city that are in Wake County. All provisions of the Wake County Code of Ordinances relating to civil and criminal remedies, including fines, penalties, equitable relief, and treatment of each day's continuing violation as a separate and distinct offense, as amended from time to time, apply with respect to violations of the Wake County Animal Control Ordinance within the portions of the city that are in Wake County. Nothing in this resolution is intended to make section 1-9 (General penalties, etc.) of the Durham City Code apply with respect to violations of the Wake County Animal Control Ordinance. Resolution 9681, adopted November 2, 2009, provides that the Orange County Animal Control Ordinance is applicable in the portions of the city that are in Orange County. (Ord. No. 13918, §§ 1, 2, 11-2-2009; Res. No. 9849, § 1, 4-1-2013; Res. No. 9850, § 1, 4-1-2013)

Sec. 6-2. Bird sanctuary.

(a) *Designation of city.* The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(b) *Trapping, shooting birds or wildfowl.* It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wildfowl or to rob bird nests or wildfowl nests; provided, however, that if starlings, pigeons, or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or deface property, in the opinion of the director of public safety, and no satisfactory alternative is found to abate such nuisance, such birds may be destroyed in such numbers and in such manner as is deemed advisable by the director of public safety. State law references: Cruelty to animals, G.S. 14-360.

Sec. 6-3. Shooting or poisoning wild game or squirrels.

It shall be unlawful for any person to shoot any wild game or any squirrel, whether wild or tame, with any gun, firearm or bow and arrow or willfully poison any wild game or squirrel.

However, deer hunting by bow and arrow or crossbow (“collectively archery”), as defined by the state wildlife resources commission, is permitted on private property during the Central North Carolina deer archery season as established by the state wildlife resources commission. A person may engage in deer archery on his or her own property if he or she has on his or her person a valid state hunting license (or qualifies for an exemption from licensing by the state wildlife resources commission), or on the property of another in their absence if he or she has on his or her person both a valid state hunting license (or qualifies for an exemption from licensing by the state wildlife resources commission) and written permission from the property owner or the property owner’s authorized agent or manager. Parcels or tracts of land that are either owned by a person engaged in deer archery or for which that person has been given written permission to hunt shall be referred to as “areas of consent.” Deer archery may only occur within areas of consent when the following requirements are met:

- (1) Deer archery must be conducted from a permanent or portable elevated platform of at least ten feet above the ground; and

- (2) Areas of consent must be greater than five acres in area and may be comprised of contiguous parcels or tracts; and
- (3) No arrow shall be discharged within 250 feet of any residential dwelling, school, church, commercial building, government property, occupied structure, street, park, or other recreational area, nor shall any arrow be discharged within 250 feet of the perimeter of the area of consent; and
- (4) Hunters shall make every reasonable effort to track wounded deer for the purpose of completing the harvest and recovering the carcass; and
- (5) There is a valid hunting season in effect for which the hunting license applies to the time the bow or crossbow is discharged; and
- (6) The hunter adheres to all applicable state and local regulations; and
- (7) The person discharging the bow or crossbow exercises reasonable regard for the safety and property of other persons.

On a biennial basis the city manager shall make a report to the city council regarding deer archery within the city. This report shall include available information on the number of deer harvested, any impact on the number of deer interference incidents, and any safety issues that may arise.

Sec. 6-4. Fowl at large; impounding.

Any person, upon whose premises any poultry may run at large, in contravention of this Code or any other ordinance of the city, may distraint such poultry and turn them over to the police authorities of the city, who shall impound them for the costs of the proceedings against the owner of the poultry and any fine and other cost incurred by reason of such running at large. If the fine and costs assessed against the owner are not promptly paid, the trial court may order such poultry sold, and the proceeds of the sale be applied to the payment of the fines, penalties and costs assessed against the owners.

Sec. 6-5. Livestock on sidewalk.

It shall be unlawful for any person to permit or allow any horse, mule, cow or other livestock to walk or travel on any of the sidewalks of the city.

Durham City Code Chapter 14, Cemeteries

Note that the following series of ordinances apply only to City owned cemeteries which are: Maplewood on Kent Street; New Maplewood on Duke University Road; and Beechwood at Fayetteville and Cornwallis Roads.

Sec. 14-4. - Promulgation and enforcement of rules.

The city manager is authorized, subject to the approval of the city council, to make and carry out and enforce suitable rules and regulations for the operation and maintenance of the city cemeteries not inconsistent with this chapter. It shall be unlawful for any person to fail, neglect, or refuse to comply with such rules.

Sec. 14-8. When opened to the public.

Between March 1 and September 1 the city cemeteries shall remain open to the public from 7:30 a.m. until the earlier of sunset or 7:00 p.m. The cemetery manager may alter the closing time until change is made by daylight savings time. Between September 1 and March 1 the city cemeteries shall remain open to the public from 7:30 a.m. to 5:00 p.m. The city manager may order city cemeteries closed during an emergency. The following occurrences may be deemed emergencies by the city manager: ice storms, floods, hurricanes, tornadoes, extreme snow, natural disaster or any other situation of a serious nature. (Code 1982, § 7-7; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-9. Entering cemeteries after closing hours.

No person shall enter any city cemetery except during the hours in which they are open to the public as set forth herein, except upon permission first granted by the cemetery manager. (Code 1982, § 7-8; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-10. Ingress and egress; climbing walls.

It shall be unlawful for any person to enter the enclosures or grounds of the city cemeteries, or to go out therefrom, except at the gates located at the proper places of entrance and exit to and from such cemeteries, or to mount or walk or run upon the walls, fences thereof. (Code 1982, § 7-9; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-11. Advertisements, posters, etc.

No advertising of any description shall be permitted within any of the city cemeteries. No bills, posters, placards, pictures, or any other like or similar device shall be attached or posted on either the inside or outside of any wall or fence enclosing any of the city cemeteries. (Code 1982, § 7-10)

Sec. 14-12. Trucks and wagons forbidden.

Commercial trucks and wagons, or other similar vehicles or equipment that are deemed to be a nuisance by the cemetery manager, shall not be permitted inside the gates of any of the city cemeteries, unless engaged in cemetery business. (Code 1982, § 7-11; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-13. Bicycle, horseback, and other similar activities prohibited.

- (a) Horseback riding, riding of bicycles or go-carts, three and four wheelers, skating, skate boarding, rollerblading, jogging and other substantially similar activities are hereby prohibited in the city cemeteries.
- (b) This section shall not apply to law enforcement officers while in discharge of their official duties.

(Code 1982, § 7-12; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-14. Driving on roads; speed limits.

No person shall drive a vehicle on any part of the grounds of the city cemeteries except upon the main roads and avenues provided therein for vehicular traffic. The speed of vehicles in the cemeteries shall not exceed 15 miles per hour.

(Code 1982, § 7-13; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-15. Parking.

No person shall park or cause to remain parked any vehicle within any city cemetery unless in attendance at burial services or otherwise engaged in activities which call for the presence of such vehicle within the cemetery.

(Code 1982, § 7-14; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-16. Disturbances.

Any person disturbing the quiet and good order of any of the city cemeteries by unreasonably loud noise of any kind may be ejected from the grounds. Any person refusing to leave the cemetery when notified to do so for any disturbance, disorderly conduct or other violation of any of the regulations or ordinances concerning such cemetery, shall be guilty of a misdemeanor.

(Code 1982, § 7-16; Ord. No. 11943, § 2, 4-3-2000)

Sec. 14-17. Defacing or removing property generally--Flowers, etc.

It shall be unlawful for any person in any way to disturb any grave; deface, pull up or remove anything put or placed to mark a grave, or any wall, fence or enclosure around a grave, or any flowers, shrubs, or trees on any cemetery lot or elsewhere in the cemetery; provided, that the same shall not be a violation if done in compliance with the rules and ordinances pertaining to the cemeteries under a permit duly granted by the cemetery manager. The city shall not be liable for markers, monuments, floral pieces, baskets, or frames in which floral pieces are attached whether such markers, monuments, floral pieces, baskets or frames in which floral pieces are attached are lost, misplaced, broken or damaged due to weather conditions, thieves, vandals, or other causes.

(Code 1982, § 7-17; Ord. No. 11943, § 2, 4-3-2000)

State law references: Similar provisions, G.S. 14-148, 14-149.

Sec. 14-18. Same--Monuments, etc.

It shall be unlawful for any person willfully and without authority to defile, deface, desecrate, place any mark upon or otherwise injure any monument, headstone, or marker contained in any cemetery duly and lawfully maintained.

(Code 1982, § 7-18; Ord. No. 11943, § 2, 4-3-2000)

State law references: Removing or defacing monuments or tombstones, G.S. 14-148.

Sec. 14-19. Animals.

It shall be unlawful for any person to allow his or her animal, except service animals trained to assist the person with his or her specific disability, to enter any city cemetery, and all dogs and fowl, except said service animals, found within the enclosures or grounds of any city cemetery shall be impounded.

(Code 1982, § 7-19; Ord. No. 11943, § 2, 4-3-2000)

Durham City Code Chapter 22, Emergencies and Emergency Management

Sec. 22-2. - Declaration of state of emergency.

The mayor is authorized to declare a state of emergency.
(Ord. No. 14652, § 2, 6-16-2014)

Sec. 22-3. - Authority to impose prohibitions and restrictions.

The mayor is authorized to impose by declaration prohibitions and restrictions under G.S. 166A-19.31, and to impose those prohibitions and restrictions at a particular time as appropriate. The mayor may determine and impose the prohibitions or restrictions that he or she deems necessary or suitable to a particular state of emergency.
(Ord. No. 14652, § 2, 6-16-2014)

Sec. 22-4. - Content of prohibitions and restrictions.

The prohibitions and restrictions referred to in section 22-3 include:

- (1) Of movements of people in public places, including imposing a curfew; directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the city's corporate limits and to property and rights-of-way belonging to the city and located outside its corporate limits; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency area, and the movement of persons within the area.
- (2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.
- (3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.
- (4) Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subsection does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subsection, the term "dangerous weapons and substances" has the same meaning as it does under G.S. 14-288.1. As used in this subsection, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).
- (5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.
(Ord. No. 14652, § 2, 6-16-2014)

Sec. 22-7. - Who may act when mayor is not available.

- (a) During the disability of the mayor, or the mayor's absence from the city, or at other times when the mayor is not authorized by law to exercise the functions of the office, the mayor pro tempore may exercise the functions assigned to the mayor in this article. During the disability of the mayor pro tempore, or the mayor pro tempore's absence from the city, or at other times when the mayor pro tempore is not authorized by law to exercise the functions of the office, the city manager may exercise the functions assigned to the mayor in this article.
- (b) The person designated or approved by the city council to perform the duties of the city manager during the absence or disability of the city manager, or while the office of city manager is not filled, may exercise the functions assigned to the mayor in this article. This subsection applies only when (1), (2), and (3) apply:
 - (1) During any of the following: the disability of the mayor, the mayor's absence from the city, the time when the mayor is not authorized by law to exercise the functions of the office, or the time when the office of mayor is vacant;

(2) During any of the following: the disability of the mayor pro tempore, the mayor pro tempore's absence from the city, the time when the mayor pro tempore is not authorized by law to exercise the functions of the office, or the time when the office of mayor pro tempore is vacant; and

(3) During the absence or disability of the city manager, or while the office of city manager is not filled.

(c) The functions assigned to the mayor in this article include the power to terminate a state of emergency.

(d) In this section, "city manager" means only the individual appointed as city manager by the city council, and does not include any designees of the city manager.

(Ord. No. 14652, § 2, 6-16-2014)

Durham City Code Chapter 26, Environment, Litter, Vandalism and Pollution

Sec. 26-2. Public urination and defecation prohibited.

Except in designated water closets or toilet facilities, 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 or on any private property. Having 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.

(Code 1982, § 12-30; Ord. No. 11558, 8-17-1998)

Article II. Noise.

Sec. 26-23. Generally.

(a) *Unreasonably loud and disturbing noises prohibited.* Subject to the provisions of this section, it shall be unlawful for any person to make, permit, continue, or cause to be made or to create any unreasonably loud and disturbing noise in the city. For purposes of this section, the following definitions shall apply:

(1) *Unreasonably loud.* Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order.

(2) *Disturbing.* Noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the area. In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered: Time of day; proximity to residential structures; whether the noise is recurrent, intermittent, or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; the character and zoning (if applicable) of the area; whether the noise is related to the normal operation of a business or other labor activity and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(b) *Particular noises prohibited.* The following acts, among others, are declared to be unreasonably loud and disturbing noises in violation of this section but the enumeration shall not be deemed to be exclusive, namely.

(1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal; the creation by means of any such signal device of any unreasonably loud or harsh sound, and the sounding of such device for an unnecessary and unreasonable period of time.

(2) The playing of any radio, phonograph or any musical instrument in such a manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons in any dwelling, hotel or other type of residence.

(3) The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity.

(4) The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, rattling or other noise.

(5) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.

(6) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(7) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

(8) The erection (including excavation), demolition, alteration or repair, or cleaning the outside of, any building in a residential or business district other than between the hours of 7:00 a.m. and 8:00 p.m. on weekdays, except in cases of urgent necessity in the interest of public safety or convenience; provided, however, in cases in which the work is required by an emergency, or by the nature of the particular project or specified portion thereof it is necessary to have a continuous operation without break, or where the specified work cannot be performed while the plant or enterprise is in operation, the city manager may issue a permit for such work to be carried on between hours and on days in addition to the hours and days herein mentioned. The term "weekdays," when used in this subsection, means any day except Sunday.

(9) The creation of any excessive noise on any street adjacent to any school, institution of learning, library, sanitarium or court while the same is in session, or adjacent to any hospital, or any religious facility during services, which unreasonably interferes with the working of such place.

(10) The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(11) The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof.

(12) The shouting and crying of peddlers, hawkers and vendors which disturb the quiet and peace of the neighborhood.

(13) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, sale, display or advertisement of merchandise.

(c) *Small motors.* The running of a motor not exceeding one horsepower on a refrigeration truck for the purpose of keeping perishable fruits, vegetables and all other perishable meats and foods contained in such a truck from spoiling, shall not constitute an unnecessary noise or disturbance within the meaning of this section.

(d) *Particular standards established:*

(1) In addition to the violations established by subsections (a) and (b) of this section, no person shall cause, produce, or allow any mechanically or electronically produced or amplified sound that: (i) exceeds the levels set out in subsection (d) of this section as such sound is measured at any point beyond the boundary of the property from which the sound emanates, and (ii) is not authorized by a permit issued pursuant to the City Code or state or federal authority; or otherwise exempted from regulation by the exceptions established by subsection (e) of this section;

(2) No nighttime (11:00 p.m.--8:00 a.m.) sound level shall exceed 50 dB(A);

(3) No daytime or evening (after 8:00 a.m.--before 11:00 p.m.) sound level shall exceed 60 dB(A);
and

(4) "Decibel" (dB) as used in this subsection shall mean a unit for describing the amplitude of sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter. The sound level shall be measured by the use of a sound level meter and frequency weighting network "A" as specified in the American National Standards Institute specifications for sound level meters.

(e) *Exceptions.* The following sounds shall be exempt from the provisions of this section:

(1) Sounds of safety signals, warning devices, and emergency pressure relief valves;

(2) Sounds resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency;

(3) Any sound resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city or a state or federal agency when such sounds do not exceed the conditions and limits stated in the license or permit;

(4) Sounds emanating from the normal operations of properly equipped aircraft (not including model aircraft);

(5) Sounds emanating from a motor vehicle, or lawnmower or agricultural equipment operated between the hours of 7:00 a.m. and 9:00 p.m. when the vehicle or equipment is properly equipped with

the manufacturer's or other authorized standard mufflers and sound reduction equipment and in use under proper operating conditions; and

(6) Musical chimes emanating from a public or religious institution or facility, provided that the sound is less than 15 minutes in duration and occurs not more than three times per day.

(7) Sounds emanating from unamplified musical performances held at Durham Central Park between the hours of 10:00 a.m. and 9:00 p.m.

(Code 1964, § 13-17; Code 1982; Ord. No. 6445, §§ 1, 2, 7-23-1984; Ord. No. 6884, § 1, 2-17-1986; Ord. No. 11687, § 1, 5-17-1999)

State law references: Authority to regulate noise, G.S. 160A-184.

Sec. 26-24. Radios and mechanical musical instruments.

It shall be unlawful for any person to maintain and operate in any building or on any premises in the city or on any public street or on any motor vehicle using the streets or any airplane flying over the city, any radio device or mechanical musical instrument or amplifier or device of any kind whereby the sound therefrom is cast directly upon the public streets and places or for the purpose of attracting the attention of the public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises; provided, however, this section shall not apply to the actual conduct of auction sales of real estate on or adjacent to the premises to be sold where the auctioneer or auction company is properly licensed; provided, further, nothing herein shall be construed to affect official warning sounds promulgated by the emergency management agency.

(Code 1964, § 13-18; Code 1982)

Sec. 26-25. Chimes on religious facilities, etc.

Nothing contained in section 26-23 or 26-24 shall be construed as prohibiting the playing of chimes by mechanical musical instrument or device, electronics or other method on religious facilities, business buildings, and any other place within the city.

(Code 1964, § 13-19; Code 1982)

Sec. 26-85. Damaging, defacing property.

(a) *Buildings used for public or private educational purposes.* It shall be unlawful for any person willfully and without authority to destroy, defile, deface, desecrate, place any mark upon or otherwise damage any building or structure used or designated for use as a place of public or private educational purposes, or any part thereof or appurtenance thereto, or willfully and without authority to break, deface or otherwise damage any book, picture, furniture, ornament, furnishing, musical instrument, article of silver or plated ware or any other chattel or personal property kept in any building or structure for use in connection with public or private educational work.

(b) *Buildings used for religious observance.* It shall be unlawful for any person willfully and without authority to destroy, defile, deface, desecrate, place any mark upon or otherwise damage any building or structure used or designated for use as a place of religious observance or worship or instruction, or any part thereof or appurtenance thereto, or willfully and without authority to break, deface or otherwise damage any book, picture, furniture, ornament, furnishing, musical instrument, article of silver or plated ware or any other chattel or personal property kept in any building or structure for use in connection with religious observance or worship or instruction.

(Code 1964, §§ 13-7, 13-8; Code 1982, §§ 12-11, 12-13)

State law references: Injury to churches, etc., G.S. 14-144; care of school buildings and liability for damage thereto by teachers and principals, G.S. 115-149.

Sec. 26-114. Distribution of handbills.

It shall be unlawful for any person to place on the streets or sidewalks of the city, or yards adjacent thereto, or in or on automobiles or other vehicles, any loose bills or circulars of an advertising nature.
(Code 1964, § 13-2; Code 1982, § 12-4)

Sec. 26-115. Placing leaflets on vehicles in city parking garages and city off-street parking lots.

It shall be unlawful for any person to place a leaflet of an advertising, political or other nature in or on a vehicle parked in a city parking garage or on any of the off-street parking lots of the city. This section shall not apply to the owner, operator, or passengers of the vehicle.
(Code 1964, § 13-4.2; Code 1982, § 12-5(a))

Sec. 26-116. Depositing refuse upon street, etc., generally.

Except as otherwise provided, it shall be unlawful for any person to knowingly throw, place, drop or deposit upon any public sidewalk, street, lane, alley, drive, bridge, overpass, underpass, culvert, branch or catchbasin, or upon any grounds, walk, path, or drive appurtenant to any public building, park, recreation area or facility, or in or about any public swimming pool or facility, or upon any private property or railroad right-of-way without the previous permission of the owner or lessee thereof, any trash, garbage, dirt, rock, debris, paper, cardboard, melon rind, peanut hulls, empty carton or container, bottle, beer can, tin can, chewing gum, rag, glass, napkin, discarded food, refuse, dead animal, box, fruit or fruit peeling, vegetable, sweepings or any other litter, refuse or waste of any kind.
(Code 1964, § 9-30; Code 1982, § 10-100)

State law references: Littering, G.S. 14-399.

Sec. 26-117. Sweeping dirt, etc., upon sidewalk or street; disposition of sweepings.

No householder or business operator or his or her agent, shall sweep from any house, yard, store or elsewhere any dirt, ashes, leaves, yard trimmings or other refuse in or upon the streets, sidewalks or other public ways. Such dirt, ashes, leaves, yard trimmings or other refuse shall be disposed of in accordance with the provisions of this chapter.
(Code 1964, § 9-32; Code 1982, § 10-101)

Sec. 26-118. Prohibited fill material.

No garbage or offensive disease-producing, rodent-producing or insect-producing material shall be dumped in any lot or space for the purpose of filling or for any other purpose.
(Code 1964, § 9-33; Code 1982, § 10-102)

Sec. 26-119. Vehicles littering or soiling streets, etc.

(a) *By deposit of mud, clay on paved streets and other public ways.* It shall be unlawful for any person, being the owner, driver or person in charge or in control of any vehicle, to enter upon the paved streets, sidewalks and other public places with such vehicle in such manner as to cause the excessive deposit of mud or clay or other foreign materials from such vehicle upon the paved streets, sidewalks and other public places so as to litter or soil the same. If it is impractical to clean vehicle tires and wheels before entering the public streets, sidewalks or other public places, the person owning, driving or in charge or in control of any vehicle so littering and soiling streets, sidewalks or other public places shall make suitable provision promptly to clean the streets, sidewalks or other public places upon which such littering or soiling has occurred.

(b) *Scattering dirt, rock, sawdust, etc., from vehicle.* It shall be unlawful for any person, being the owner, driver or person in charge or in control of any vehicle, to scatter therefrom any dirt, rock, sand, cement, coal, sawdust, cinders, ashes or other materials or refuse upon the streets, sidewalks or other public ways of the city.

(c) *Construction of vehicle to prevent scattering of dirt, refuse, etc.* It shall be unlawful for any person, being the owner, driver or person in charge or control of any vehicle, to use such vehicle for hauling any dirt, sand, cement, coal, sawdust, cinders, ashes or other materials or refuse upon the streets, sidewalks or other public ways of the city, unless the vehicle in question is so constructed or covered as to prevent the falling and scattering of such materials or refuse while the vehicle is passing over the streets, sidewalks or other public ways of the city.

(Code 1964, §§ 9-51--9-53; Code 1982, §§ 10-103--10-105)

Sec. 26-120. Permission prerequisite to placing building materials upon street or sidewalk.

It shall be unlawful for any person to drop, place or leave any brick, stone, gravel, sand, or other building materials of any kind or nature whatsoever on any public street, sidewalk or other public way, or to permit any person in his or her employ to drop, place or leave any brick, stone, gravel, sand or other building materials of any kind whatsoever, upon any public street, sidewalk, or other public way without immediately removing the same, except upon permission of the transportation department.

(Code 1964, § 9-54; Code 1982, § 10-106)

Sec. 26-121. Duty of seller of goods, etc., of such nature that purchases throw containers, etc., on sidewalks and streets.

It shall be unlawful for any person selling goods, wares or merchandise of such nature that the purchasers thereof throw the containers or wrappers of such goods, wares or merchandise or portions of the goods, wares or merchandise themselves on the sidewalks, streets or other public ways of the city to allow such containers, wrappers or portions of such goods, wares or merchandise, or any part thereof, to remain thereon. Any person selling goods, wares or merchandise of such a nature shall also keep his or her premises clean and free from such containers or wrappers or portions of goods, wares and merchandise, so that the same will not be blown or otherwise transferred to the streets, sidewalks or other public ways.

(Code 1964, § 9-56; Code 1982, § 10-107)

Durham City Code Chapter 38, Parks and Recreation

Sec. 38-7. Violation of rules and regulations of department of recreation.

It shall be unlawful for any person to knowingly violate any rule or regulation adopted by the department of recreation and approved by the city council. Upon conviction, violators shall be punished in accordance with section 1-9.

(Code 1964, § 16-11; Code 1982, § 13-7)

Sec. 38-8. Use after closing hours; removing locks and barriers.

(a) In every case in which the department of recreation has posted a notice setting forth the closing time of a particular area, it shall be unlawful for any person to use or be in or on any such park or recreational area or facility after the closing hour set forth on the notice applying to the particular area. The use by, or presence of, any person in such park or recreational area or facility for any purpose after the closing hour applying to such area shall constitute a trespass and the person in question, upon conviction, shall be punished in accordance with section 1-9. This section shall not be construed to apply to persons in or upon such areas in pursuance of or in connection with their official duties.

(b) It shall be unlawful and shall constitute a trespass for any unauthorized person to remove a lock or a barrier installed to prohibit access into a park facility without written permission for that removal by the department of recreation. This prohibition does not apply to employees of the city acting pursuant to employment duties.

(Code 1964, § 13-26; Code 1982, § 13-8; Ord. No. 13460, §§ 1, 2, 8-6-2007)

Editor's note: Ord. No. 13460, § 1, adopted August 6, 2007, changed the title of § 38-8 from "Use after closing hours" to "Use of or entrance into closed facility." At the direction of the city, the title of § 38-8 has been changed to "Use after closing hours; removing locks and barriers."

Sec. 38-9. - Hitting golf balls.

It shall be unlawful for any person to drive or hit a golf ball with golf club in or upon any public park or public playground under the supervision and control of the city, except where designated otherwise.

(Code 1964, § 13-21; Code 1982, § 13-9; Ord. No. 14420, § 1, 4-1-2013)

Sec. 38-10. Horseback riding.

It shall be unlawful for any person to ride horseback in any public park or playground, except upon bridle paths and areas specifically designated by the director of recreation for such purposes. When the director of recreation designates such bridle paths or other areas wherein horseback riding is permitted, appropriate signs shall be posted.

(Code 1964, § 13-22; Code 1982, § 13-10)

Sec. 38-11. Flying of model airplanes.

It shall be unlawful for any person to fly a model airplane in any park, playground or recreational area or property owned or operated by the city.

(Code 1964, § 13-23; Code 1982, § 13-11)

Sec. 38-12. Dumping rubbish, trash, etc.

It shall be unlawful for any person to dump, scatter or deposit, or to allow or permit the dumping, scattering or depositing of any rubbish, loose paper, trash, garbage, bottles or other refuse in or upon any public playground or public park area within the city.

(Code 1964, § 13-25; Code 1982, § 13-12)

Sec. 38-13. Breaking of glass bottles.

It shall be unlawful for any person knowingly or intentionally to break any glass bottle in any playground, park, swimming or wading pool or any other area in the city which is under the supervision of the department of public recreation.

(Code 1964, § 13-24; Code 1982, § 13-13)

Sec. 38-17. Ejection of disorderly persons from recreational facilities.

Any police officer and any employee of the parks and recreation department in charge of a city recreational facility shall have the right to eject from such recreational facility any person creating or engaging in any disturbance, breach of the peace or illegal or disorderly conduct and require such person to remain away from such premises for the remainder of the dance or other performance or, in the case of swimming pools, for the remainder of the day.

(Code 1964, § 16-10; Code 1982, § 13-16)

Sec. 38-21. - Alcoholic beverages—Possession and consumption in public buildings and parks.

(a) Definitions. The following words shall have the meanings set forth herein unless the context clearly indicates otherwise:

Alcoholic beverage means any beverage containing at least one-half of one percent alcohol by volume including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(b) Except as is provided in this section, no person shall consume any alcoholic beverage on any property owned or occupied by the city.

(c) The consumption of alcoholic beverages shall be lawful, upon the securing of the necessary permits from the city and the state alcoholic beverage control commission, in the following facilities and areas owned or operated by the city:

(1) The building called McCown-Mangum House in West Point on the Eno Park including its attached patio and lawn;

(2) The property, building and grounds of the police training and recreational facility at Lake Michie;

(3) The plaza on top of the Durham Centre Parking Garage (Peoples Plaza);

(4) The grassed areas known as the Amphitheater located on the north side of the Eno River in West Point on the Eno Park;

(5) The Durham Armory;

(6) The CCB Plaza (being the area bounded by Chapel Hill St., Corcoran St., Parrish St., and Market St.);

(7) The Spruce Pine Lodge in the Lake Michie Recreation Area, including its lawn, the associated picnic areas, and the playfield;

(8) The Boat House in the Lake Michie Recreation Area, including its deck;

(9) The Historic Parrish Street Forum;

(10) The Leigh Farm house including its lawn in Leigh Farm Park; and

(11) The following parks located within the downtown area of the city only when such parks are being used for events that are open to the general public: Muirhead Plaza, located at Five Points; Rotary Park, located at the intersection of Mangum Street and Morgan Street; and the park at the intersection of Mangum and Main Streets.

(d) Any person desiring to provide alcoholic beverages for consumption in one of the facilities or areas listed in subsection (c) of this section shall obtain a permit from the city manager or the city manager's designee and shall abide by any and all rules or regulations approved by the city manager concerning such consumption.

(e) The consumption of alcoholic beverages shall be lawful, upon securing the necessary permits from the state alcoholic beverage control commission, in the following facilities and areas which have been leased from the city by outside agencies or are managed by a third party on behalf of the city:

- (1) The property leased by the city to the Museum of Life and Science;
- (2) Durham Convention Center and its Plaza;
- (3) Durham Arts Council Building;
- (4) Carolina Theatre Building;
- (5) Farmers' Market Pavilion, the Sister Cities Grove (being the area bounded by the Farmers' Market Pavilion on the south, Roney Street on the west, the adjacent private property on the north, and Foster Street on the east), and the grassy meadow on the east side of Foster Street of Durham Central Park. However, the skate park area of Durham Central Park shall be excluded from alcohol consumption;

(6) Durham Athletic Park; provided, however, that the contents of any beer or wine sold in bottles or cans must be poured into cups;

(7) Durham Bulls Athletic Park; provided, however, that the contents of any beer or wine sold in bottles or cans must be poured into cups; and

- (8) Durham Performing Arts Center and its plazas.

Nothing in this section shall be interpreted as preventing any of the agencies operating facilities listed in this subsection from determining under what circumstances, if any, they will permit the consumption of alcoholic beverages in those facilities.

(f) The following permit terms for alcohol usage shall apply:

(1) Any person serving alcoholic beverages shall post on site at all times during which alcoholic beverages are consumed one or more persons who shall be responsible for ensuring that no alcoholic beverages are provided to underage or intoxicated persons;

(2) Participants, guests and attendees of private and private functions where alcohol is served shall not be permitted to bring their own alcohol to an event; and

(3) City facilities leased from or managed pursuant to a third party agreement shall be governed by those agreements if they address liability requirements for events where alcohol may be served. Any person desiring to serve alcoholic beverages shall maintain general liability insurance applicable to the serving of alcoholic beverages at the event and shall name the city as an additional insured on the policy with respect to claims arising out of the use of the property owned or operated by the city. A certificate evidencing such insurance shall be submitted to the city manager's office or the manager's designee prior to the holding of an event where alcoholic beverages are served. Insurance shall be at the rate (combined single limit for bodily injury and property damage liability) designated by the city's risk manager. The city's risk manager may vary or waive any requirements stated in this subsection, depending upon the nature of the event for which the permit is to be issued.

(Code 1964, § 13-12; Code 1982, § 12-16; Ord. No. 4884, § 1, 3-20-1978; Ord. No. 4925, § 1, 7-17-1978; Ord. No. 5207, § 1, 7-16-1979; Ord. No. 5287, § 1, 11-5-1979; Ord. No. 5605, § 1, 3-2-1981; Ord. No. 5655, § 1, 4-21-1981; Ord. No. 6219, § 1, 11-7-1983; Ord. No. 6718, § 1, 5-7-1985; Ord. No. 6893, §§ 1, 2, 4-7-1986; Ord. No. 8024, § 1, 3-19-1990; Ord. No. 8072, § 1, 6-4-1990; Ord. No. 9677, § 1, 8-17-1992; Ord. No. 9687, § 1, 9-8-1992; Ord. No. 9993, § 1, 10-4-1993; Ord. No. 13291, §§ 1, 2, 6-19-2006; Ord. No. 13389, §§ 1—3, 3-5-2007; Ord. No. 14241, § 1, 4-2-2012; Ord. No. 14422, § 1, 4-1-2013; Ord. No. 14654, 6-16-2014)

State Law reference— Drinking in public buildings, G.S. 18A-30.

Sec. 38-22. Parking in city parks.

(a) Unless otherwise designated by signage in a particular lot, no vehicle may park in a parking space in a city park lot longer than three hours.

(b) The director of recreation shall cause appropriate signs or markings to be maintained on each parking lot to which this section applies.

(c) It shall be unlawful for any person to park a vehicle in such way that such vehicle shall not be entirely within the limits of the parking space. It shall be unlawful for any person to park any vehicle across any line or marking of a space.

(d) It shall be unlawful for any person to cause, allow, permit, or suffer any vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for any parking space.

(e) It shall be unlawful to wash any vehicle or to make any repairs, except emergency repairs, to any vehicle parked in a park parking lot.

(f) The provisions of section 13-20 shall not apply to employees of the city acting pursuant to employment duties.

(Ord. No. 13460, §§ 3, 4, 8-6-2007)

Durham City Code Chapter 46, Public Safety

Sec. 46-21. - Discharging weapons—Generally.

(a) It shall be unlawful for any person other than an officer authorized by law, or upon a range legally permitted by the chief of police, to discharge or shoot any firearm, pump gun, air rifle, air pistol, BB gun, crossbow, bow and arrow, slingshot, or any other weapon of like kind within the city.

(b) Subsection (a) shall not apply when the weapon is discharged or shot:

(1) In defense of person or property;

(2) Pursuant to the lawful directions of a law enforcement officer;

(3) In a city park for ceremonial or recreational purposes, provided that such person has first obtained, in writing, permission from the director of parks and recreation or his or her designee. In no event shall permission be given for the discharge of live ammunition;

(4) In a cemetery for the purpose of conducting a military or law enforcement funeral or commemorative exercise provided that such person has first obtained, in writing, permission from the city manager or his or her designee. In no event shall permission be given for the discharge of live ammunition;

(5) On state-designated game lands; or

(6) Pursuant to section 6-3, which permits deer archery within the city limits under specified circumstances.

(Code 1964, § 13-29; Code 1982, § 12-20; Ord. No. 9738, § 1, 12-21-1992; Ord. No. 10065, §§ 1, 2, 2-7-1994; Ord. No. 14435, 4-15-2013; Ord. No. 14516, § 2, 11-4-2013)

Editor's note— Ord. No. 14435, adopted April 15, 2013, changed the title of section 46-21 from "Discharging firearms—Generally" to "Discharging weapons—Generally." The historical notation has been preserved for reference purposes.

Charter reference— Authority to regulate, § 60.

State Law reference— Authority to regulate, G.S. 160A-189.

Sec. 46-22. Display and possession of dangerous weapons-Prohibited on certain city property.

(a) It is unlawful for any person to display a dangerous weapon while on or in city property, or to leave displayed a dangerous weapon within a motor vehicle while the vehicle is on city property.

Notwithstanding the foregoing, this section shall not prohibit the display of a long gun being stored in a locked gun rack in an attended motor vehicle, or a locked unattended motor vehicle, while the vehicle is on city property.

(b) The City Manager, or his or her designee, may permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. §14-415.11(c), on the City property identified below. The posting of a prohibition against carrying a concealed handgun at or within an athletic field shall only apply during an organized athletic event when the field has been scheduled for use with the City. Notwithstanding the foregoing, this section shall not prohibit a concealed handgun permittee from storing a handgun within the trunk, glove box, or other enclosed compartment or area within or on a locked motor vehicle while the vehicle is on City property.

(1) any City building and its appurtenant premises;

(2) the following recreational facilities:

a. each athletic field at or within:

1. C.M. Herndon Park located at 511 Scott King Road;
2. C.R. Wood Park located at 417 Commonwealth Avenue;
3. Campus Hills Park located at 2000 S. Alston Avenue;
4. Cook Road Park located at 602 Cook Road;
5. Crest Street Park located at 2503 Crest Street;
6. East Durham Park located at 2500 E. Main Street;
7. East End Park located at 1200 N. Alston Avenue;
8. Hillside Park located at 1301 S. Roxboro Street;
9. Lakeview Park located at 3500 Dearborn Drive;
10. Long Meadow Park located at 917 Liberty Street;
11. Lyon Park located at 1200 W. Lakewood Avenue;
12. Morreene Road Park located at 1102 Morreene Road;
13. Old Chapel Hill Road Park located at 3751 SW Durham Parkway;
14. Old Farm Park located at 7 Hedgerow Place;
15. Old North Durham Park located at 310 W. Geer Street;
16. Oval Drive Park located at 2200 W. Club Boulevard;
17. Pineywood Park located at 400 E. Woodcroft Parkway;
18. Red Maple Park located at 3320 Hinson Drive;
19. River Forest Park located at 1000 Windermere Drive;
20. Rock Quarry Park located at 701 Stadium Drive;
21. Sherwood Park located at 1720 Cheek Road;
22. Southern Boundaries Park located at 400 Third Fork Road;
23. Twin Lakes Park located at 435 Chandler Road;
24. Valley Springs Park located at 3805 Valley Springs Road;
25. Walltown Park located at 1308 W. Club Boulevard;
26. Weaver Street Park located at 3000 E. Weaver Street;
27. Whippoorwill Park located at 1632 Rowemont Drive;
28. Wrightwood Park located at 1301 Anderson Street;
29. Durham Bulls Athletic Park located at 409 Blackwell Street;
30. Durham Athletic Park located at 500 W. Corporation Street.

b. each of the swimming pools identified below:

1. Campus Hills Pool located at 2000 S. Alston Avenue;
2. Edison Johnson Aquatic Center located at 500 W. Murray Avenue;
3. Forest Hills Pool located at 1639 University Drive;
4. Hillside Pool located at 1221 Sawyer Street;
5. Long Meadow Pool located at 917 Liberty Street

c. each of the facilities used for athletic events identified below:

1. Edison Johnson Recreation Center located at 500 W. Murray Avenue;
2. W.D. Hill Recreation Center located at 1308 Fayetteville Street.

(a) For purposes of this section, the following words have the meaning indicated:

Athletic field means an outdoor area used for organized athletic events including any appurtenant facilities.

City property means any building including its grounds, park, recreational facility, playground, cemetery, landfill, parking garage, parking lot, streets, sidewalks, alleyways, or other public property owned by the city or leased by the city as lessee. City property does not include: property leased, subleased or rented by the city to a private person or entity; or ranges legally permitted by the chief of police.

Dangerous weapon means any firearm, pump gun, air rifle, air pistol, BB gun, crossbow, bow and arrow, bowie knife, dirk, dagger, slingshot, loaded cane, metallic knuckles, razor, shuriken, stun gun, switch blade knife, black jack, or any other weapon of like kind.

Handgun means a firearm that has a short stock and is designed to be held and fired by the use of a single hand.

Long gun means a shotgun or rifle which expels a projectile by action of an explosion.

Recreational facility means an athletic field, a swimming pool, or a facility used for athletic events.

Swimming pool means an artificially enclosed body of water intended for swimming or water-based recreation, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.

(b) Conduct prohibited by this section shall not apply to:

- (1) Sworn law enforcement officers who are within their jurisdiction;
- (2) Members of the United States armed forces or national guard while in the discharge of their official duties;
- (3) Any person possessing a dangerous weapon in a city cemetery for the purpose of conducting a military or law enforcement funeral or commemorative exercise pursuant to first having obtained written permission from the city manager or his or her designee;
- (4) Any person possessing a dangerous weapon in a city park for ceremonial or recreational purposes pursuant to having first obtained valid written permission from the director of parks and recreation or his or her designee.

Sec. 46-28. Penalties.

Violation of this article is a Class 3 misdemeanor, the maximum fine for which shall be \$500.00.

Sec. 46-149. Possession of open containers of certain alcoholic beverages; disposal of containers, and consumption of certain alcoholic beverages.

(a) *Definitions.* The following definitions shall apply to this section.

Beer means any malt beverage as defined by section 38-20.

Open container means any container that has a broken seal or a container other than the manufacturer's unopened original container.

Pub bike means a non-motorized device with four wheels, steering for a forward seated driver, 8-12 passenger saddle seats, and pedals by which the device may be propelled upon a street at a maximum speed of 15 mph when operated upon a level surface. A pub bike shall be equipped with, and maintain in good working order: at least one head lamp which, under normal atmospheric conditions and on a level road, produces a driving light sufficient to render clearly discernible a person 200 feet ahead; rear lamps

which exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of the pub bike; driver operated brakes adequate to control the movement of and to stop and hold the pub bike, including two separate means of applying the brakes; at least one stop lamp which exhibits a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, actuated upon application of the foot brake; and turn signal lamps by which the driver of the pub bike may indicate to the operator of a vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line.

Public street means any highway, road, street, avenue, boulevard, or other way under the control of the city and open to public use, including sidewalks of any such street.

Wine means unfortified wine as defined by G.S. ch. 18B.

(b) *Possession of open containers.* No person, other than an occupant of a motor vehicle or a passenger on a pub bike, shall possess an open container of beer or wine on any public street except as permitted in subsection (e) of this section.

(c) *Disposal of containers.* No person shall drop, throw, cast, or deposit any used wine or beer container upon any public street or upon any public or private property without the consent of the owner.

(d) *Consumption of alcoholic beverages on public streets.* No person, other than an occupant of a motor vehicle or a passenger on a pub bike, shall consume beer or wine on any public street except as permitted in subsection (e) of this section.

(e) *Possession and consumption of beer and wine is permitted.*

(1) Possession and consumption of beer and wine is permitted within the boundaries and during the event hours of any public, community-sponsored function or celebration being conducted within a public street or other publicly owned area pursuant to a written permit issued by the city manager. This permit may also allow the sale, service, and distribution of beer and wine on designated public streets and areas reserved for the event, subject to all applicable ABC regulations. Prior to the issuance of such a permit, the city manager must establish the boundaries of the event and temporarily close the streets within the boundaries. The city manager may impose on the entity seeking the permit reasonable requirements to ensure that the sale, distribution, service, possession or consumption of beer and wine does not extend beyond the boundaries of the function or celebration.

(2) Possession and consumption of beer and wine is permitted within the boundaries of an outdoor seating area being operated pursuant to and in compliance with the provisions of Sec. 54-110.

Durham City Code Chapter 50, Public Transportation and Aviation

Sec. 50-1. Loitering at bus terminal.

It shall be unlawful for any person not having tickets or business with the officials to loaf or loiter on the platform or premises of any bus terminal.

(Code 1964, § 5-20; Code 1982, § 12-10)

Sec. 50-386. Stopping, standing or parking at scene of accident or emergency.

The driver of any tow truck, or other vehicle that can be used in the recovery of a disabled vehicle, shall not park, stop or leave standing said tow truck or other recovery vehicle that he or she is operating, within 200 feet of any vehicle involved in an accident upon the public streets or highways, unless requested to approach the disabled vehicle by a police officer, firefighter, the person then in control of the disabled vehicle, or the owner of the disabled vehicle.

(Code 1964, § 12-231; Code 1982, § 22-191; Ord. No. 6078, § 1, 2-21-1983)

Sec. 50-387. Solicitation of business.

No tow truck driver or tow truck operator, or any employee or agent of a tow truck operator, shall approach the person then in control of a vehicle involved in an accident for the purpose of soliciting or offering towing services, unless specifically directed or requested to do so by a police officer, a firefighter, the person then in control of the disabled vehicle, or by the owner of the disabled vehicle.

(Code 1964, § 12-232; Code 1982, § 22-192)

Sec. 50-388. Cleaning debris at accident scene.

The tow truck driver and the tow truck operator engaged in towing a disabled vehicle shall cleanup and remove from the street or highway any broken glass, vehicular parts, contents of a disabled vehicle, or other debris before leaving the scene of the accident, to the satisfaction of the police officer or firefighter at the accident scene.

(Code 1964, § 12-233; Code 1982, § 22-193)

Sec. 50-389. Undue delay in answering towing calls.

If a tow truck operator is requested to provide towing services at the scene of an accident on a public street or highway, or when a vehicle is obstructing traffic or blocking access to private property, or when the operator is under arrest, the tow truck operator must arrive at the location of the vehicle to be towed within 30 minutes after receiving the request for towing services. If the tow truck operator fails to so arrive at the location of the vehicle to be towed in any of the above situations, any police officer or firefighter may request towing services from the nearest available tow truck operator, or from a tow truck operator on the rotation list. The city, its agents and employees, shall not be liable for any cost, fee, or expense incurred or claimed by any tow truck operator who fails to arrive at the location of a vehicle towed at the request of a police officer or firefighter within 20 minutes after receiving the request for towing.

Durham City Code Chapter 54, Sales and Solicitations; Business Regulation

Sec. 54-1. Curb service.

It shall be unlawful for any person to engage or take part in what is commonly known as curb service, that is, the delivery by a merchant or his or her agent, to the occupant or person in charge of a motor vehicle, of food or drinks for consumption by the occupant of such vehicle while the vehicle is parked on a street; provided, nothing herein contained shall be construed to prohibit merchants from serving drinks in containers or receptacles to be returned to such merchant.

(Code 1964, § 19-16; Code 1982, § 17-4)

Sec. 54-2. Manner of parking vehicles from which merchandise is sold.

It shall be unlawful for any person operating any wagon or other vehicle to sell merchandise from such vehicle on the streets unless such vehicle shall be parked alongside the curb in such street or in that portion of the street where the curb would be constructed. Blocking the street, which prevents vehicular travel, will be considered in violation of this section.

(Code 1964, § 17-3; Code 1982, § 17-5)

Sec. 54-3. Poolrooms, billiard parlors and other places of amusement.

(a) It shall be unlawful for any proprietor, manager or owner of a billiard parlor, poolroom, skating rink, shooting gallery or other similar place or device of amusement to allow, suffer or permit the use of any of such tables, rinks, galleries or other similar devices, either for hire or gratis between the hours of 2:00 a.m. and 7:00 a.m. from the last Sunday of April of each year until the last Sunday of October of each year and between the hours of 1:00 a.m. and 7:00 a.m. at all other times; provided, however, this section shall not make unlawful the use of pool or billiard tables in private homes or private clubs and lodges which are not engaged in the business of operating such devices for hire. Provided, however, that the proprietor, manager or owner of a place of amusement regulated pursuant to this section may, with written permission of the city manager, and in accordance with rules and regulations adopted by the city manager and approved by the city council, allow a limited number of patrons to remain in the establishment after closing, to operate the electronic games therein for the purpose of establishing or attempting to establish, a record number of points or a record number of continuous playing hours on a given game or electronic machine.

(b) It shall be unlawful for any person to establish, conduct, maintain or operate, or to assist in the conduct, maintenance or operation of any public poolroom or billiard parlor in any portion of any building or structure within the corporate limits of the city, except upon the ground floor thereof.

(c) It shall be unlawful for any person who owns, operates or conducts a public poolroom or billiard parlor, to have or maintain or use partitions, screens, painted or stained windows or doors, or any other materials, fabric, device, enclosure or obstructions which prohibit the clear or unobstructed view from the street into the entire interior of such public poolroom or billiard parlor in which the business herein referred to is being carried on.

(Code 1964, § 3-11, 3-12, 3-13; Ord. No. 4915, § 1, 6-5-78; Code 1982, § 4-6, 4-7, 4-8; Ord. No. 6074, § 1, 2-7-83; Ord. No. 13574, Pt. 1, 4-7-2008)

ARTICLE II. - SALES AND SOLICITATIONS IN THE STREET RIGHT-OF-WAY

Sec. 54-26. - Definitions.

The following definitions apply for purposes of this article, unless the context requires otherwise.

Chief of police means the chief of police of the City of Durham or any sworn police officer designated by the chief of police.

Control, with respect to real estate that is city-controlled or controlled by the city, is used as follows: The city controls real estate when it has a possessory interest therein on account of or pursuant to a written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law.

Controlled-access highway means a section of state highway especially designed for through traffic and over, from, or to which highway owners or occupants of abutting property or others have only a controlled right or easement of access.

Core downtown park means any of the following three areas: (1) the park bounded by Parrish Street, Mangum Street, Main Street, and a privately-owned property; (2) the triangle-shaped land at Five Points, bounded on the northeast by West Main Street, on the south by West Chapel Hill Street, and on the west by privately-owned property; and (3) CCB Plaza, which is bounded by Chapel Hill Street, Corcoran Street, Parrish Street, and Market Street; provided, however, "core downtown park" is limited to the portion of each of those three areas that is owned by the city of Durham and open to the general public, and to the times that it is open to the general public.

Eating establishment means an establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes, but that do not qualify as a restaurant as that term is defined within this section. Eating establishments shall also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drug stores, which have a lunch counter or other section where food is sold to be eaten on the premises.

Eating establishment operator means the person, firm, or corporation operating an eating establishment and associated outdoor seating area. As used in this section, this definition includes each and every owner, and each and every manager if different from the owner(s), of the eating establishment and associated outdoor seating area.

First Amendment protected sales are sales of newspapers and other material where the sales are protected by the First Amendment to the U.S. Constitution through the application of the 14th Amendment to the U.S. Constitution.

Food means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Frontage road means a street that is auxiliary to and located on the side of another street for service to abutting property and adjacent areas and for the control of access to such other street.

Goods means personal property.

Law means law, statute, ordinance, rule, regulation, or decree or order of any governmental entity, including a county health department and the State Department of Agriculture.

Litter means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, appliance, tool, machinery, wood, or discarded material in any form.

Median means the portion of street right-of-way that separates traffic lanes, including any curbs, regardless of whether the area separating traffic lanes is at the level of the roadway.

Mobility vehicle means a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement.

Motor vehicle means every vehicle that is self-propelled and every vehicle designed to run upon the streets that is pulled by a self-propelled vehicle. The term excludes mobility vehicles. The term also excludes a vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface.

Occupant, with respect to a motor vehicle, means the driver and all passengers.

On-street parking space means a space designated by the city or the state for parking a motor vehicle on a street right-of-way. For purposes of this article, a space is not an on-street parking space when (i) the street of which the space is a part and from which a motor vehicle immediately enters the space is closed or blocked by an order issued pursuant to section 66-430, or (ii) it is unlawful for the public to park a motor vehicle in the space.

Outdoor seating area means an area on a public sidewalk, public alley or pedestrian way whereon tables, chairs, benches, and other furnishings are placed for drinking and/or dining purposes.

Passenger means an occupant of a motor vehicle, excluding the driver.

Pedestrian way means an improved walk or passageway on public property or right-of-way intended for use by pedestrians, but not adjacent to any city street.

Permit means, unless the context otherwise requires, a permit issued pursuant to this article.

Private club means an establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not, however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13.

Private club operator means the person, firm, or corporation operating a private club and associated outdoor seating area. As used in this section, this definition includes each and every owner, and each and every manager if different from the owner(s), of the private club and associated outdoor seating area.

Public alley means a strip of land, typically no more than 20 feet in width, on public property or right-of-way, that is set aside primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

Restaurant means an establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall

not be less than 30 percent of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people.

Restaurant operator means the person, firm, or corporation operating a restaurant and associated outdoor seating area. As used in this section, this definition includes each and every owner, and each and every manager if different from the owner(s), of the restaurant and associated outdoor seating area.

Right-of-way sales activities means selling goods (i) using a sales vehicle on any street right-of-way or on any core downtown park, or (ii) by placing, directly or indirectly, goods offered for sale or samples of goods offered for sale on any street right-of-way or on any core downtown park. Selling to a customer not located on street right-of-way or on any core downtown park is excluded from this definition. For example, the following is excluded: A customer not located on the street-right-of-way places an order to a seller who may be located in or outside the street right-of-way, in response to which order the seller delivers the goods from a vehicle in the street right-of-way to a location not on the street right-of-way.

Roadway is the portion of the street right-of-way that is improved for motor vehicle traffic or ordinarily used for motor vehicle traffic. Roadway excludes any area on which parking motor vehicles is lawful.

Sale is an offer, transfer, or agreement described in the definition to "sell."

Sales gear means a sales vehicle and all items that are brought by or at the direction of the seller or salesperson for use by the seller, salesperson, or customers, including seats, power cords, trash containers, and goods to be sold.

Sales vehicle means a vehicle, cart, stand, table, or other device or thing, whether or not wheeled, 12 inches or more in height, that rests in whole or in part, directly or indirectly, on any street right-of-way or core downtown park, while selling is occurring with the use of, from, or in connection with the vehicle, stand, cart, table, or other device or thing. Without limiting the preceding sentence of this definition, "sales vehicle" includes "mobile food unit" and "pushcart," as those expressions are defined in Subchapter 18A of Title 15A of the N.C. Administrative Code. A "sales vehicle" is not necessarily a "vehicle" as "vehicle" is defined in this section.

Salesperson means the individual who engages in the transaction of selling goods, and is not necessarily the owner of the goods being sold.

Sell means to transfer, or to offer to transfer, title or possession of goods for valuable consideration or to agree to transfer, or to offer to agree to transfer, title or possession of goods for valuable consideration.

Seller means the owner of goods being sold or operator of a business or other entity from which goods are sold.

Sidewalk is the portion of the street right-of-way intended for the use of pedestrians that is between the curb and the adjacent property line. If there is no curb or right-of-way parking area, it is the portion of the street right-of-way intended for the use of pedestrians that is between the roadway and the adjacent property line. If there is no curb but there is a right-of-way parking area, it is the portion of the street right-of-way intended for the use of pedestrians that is between the right-of-way parking area and the adjacent property line.

Solicitation-restricted right-of-way means street right-of-way on which any of the following types of streets is located: Interstate Highway System; National System of Interstate and Defense Highways; controlled-access highway; frontage road; U.S. Highway; U.S. Route; street or highway that is part of the State highway system or that is a state highway; street with a speed limit of 35 miles per hour or greater; street with more than two designated vehicle travel lanes; street on which there is a median; and one-way street regardless of the number of designated vehicle travel lanes.

Special event means an event or activity for which a permit is issued pursuant to section 66-430, or an event or activity taking place in a city-owned or city-controlled park, plaza, or other property for which written permission is granted by the city.

Special-event permit means a permit issued pursuant to section 66-430, or the written permission granted by the city for an event or activity taking place in a city-owned or city-controlled park, plaza, or other property.

Street means the street right-of-way but excludes sidewalk and areas farther from the roadway than sidewalk.

Street right-of-way means the entire area in which the public, the city, or the state owns a property interest, when a portion is open to the use of the public as a matter of right for any motor vehicular traffic. The street right-of-way includes roadway, and may include right-of-way parking area, sidewalk, median, and unpaved areas, including grassed area.

Tangible thing includes money.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway. This term does not include a self-balancing nontandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(Code 1982, § 17-51; Ord. No. 12730, § 1, 12-9-2002; Ord. No. 14332, § 1, 10-15-2012; Ord. No. 14355, § 4, 11-5-2012; Ord. No. 14375, §§ 2, 3, 12-17-2012; Ord. No. 14580, § 1, 2-20-2014)

Sec. 54-84. - Interacting with or impeding traffic on roadways.

(a) Prohibitions.

(1) No individual in a solicitation-restricted right-of-way shall stop or attempt to stop any motor vehicle that is on the roadway located within that right-of-way for the purpose of soliciting employment, business, or contributions from any occupant of the motor vehicle, or for the purpose of providing any service to the motor vehicle or any of its occupants.

(2) No individual in a solicitation-restricted right-of-way shall deliver, or, by means of a sign or other device of any kind, or by means of speech, sounds, signals, or motions offer to deliver, any tangible thing to any occupant, of a motor vehicle that is on the roadway located within that right-of-way.

(3) No individual in a solicitation-restricted right-of-way shall, by means of a sign or other device of any kind, or by means of speech, sounds, signals, or motions, request any occupant of a motor vehicle that is on the roadway located within that right-of-way to deliver any tangible thing to the individual, unless the individual specifies by a sign that can be read from a distance of 30 feet that the tangible thing is to be delivered to the individual or another person only when the motor vehicle is off the street right-of-way.

(4) Unless he or she is on a paved sidewalk, no individual in a solicitation-restricted right-of-way shall, by means of a sign or other device of any kind, or by means of signals or motions, attempt to alert any occupant of a motor vehicle that is on the roadway located within that right-of-way to any commercial activity.

(b) Exceptions. Subsection (a) does not prohibit an individual aged 16 or more years from doing the following:

(1) Stopping or attempting to stop a motor vehicle on a roadway, for the purpose of soliciting employment, business, or contributions, when

a. The vehicle is in one of the following locations:

1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or
3. On a street with only one travel lane, and the vehicle is located in the travel lane;

b. The vehicle is approaching a traffic signal or sign that requires the vehicle to come to a complete stop; and

c. The individual is on a paved sidewalk.

The individual does not violate subsection (b)(1)b. when, for example, the vehicle is approaching a stop sign or a steady, flashing, or strobe beam light emitting red light, and the individual is in violation of subsection (b)(1)b. if the vehicle is approaching a yield sign, or a steady, flashing, or strobe beam light emitting yellow or green light.

(2) Delivering or offering to deliver a tangible thing to an occupant of a motor vehicle on a roadway when

a. The vehicle is in one of the following locations:

1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or
3. On a street with only one travel lane, and the vehicle is located in the travel lane;

b. The driver of the vehicle is, while the delivery or offer to deliver is occurring, complying with either a traffic signal that requires the vehicle to come to a complete stop and the traffic signal has not changed to allow the vehicle to proceed, or a stop sign; and

c. The individual is on the side of the vehicle that is closest to the edge of the roadway.

(3) Receiving a tangible thing from an occupant of a motor vehicle on a roadway when:

a. The vehicle is in one of the following locations:

1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or
3. On a street with only one travel lane, and the vehicle is located in the travel lane;

b. The driver of the vehicle is, while the individual is receiving the tangible thing from the occupant, complying with either a traffic signal that requires the vehicle to come to a complete stop and the traffic signal has not changed to allow the vehicle to proceed, or a stop sign; and

c. The individual is on the side of the vehicle that is closest to the edge of the roadway. The individual does not violate subsections (b)(1)a.1., (b)(2)a.1., or (b)(3)a.1. when, for example, on a street with two northbound lanes and two southbound travel lanes, the vehicle is in either the rightmost northbound lane or the rightmost southbound lane.

(c) An individual acting pursuant to subsection (b) shall not:

(1) *First Amendment protected goods*. Sell any goods besides First Amendment protected goods. First Amendment protected goods include newspapers and magazines.

(2) *Roadway*. Stand, sit, or walk on a roadway, provided that this subsection does not prohibit an individual from standing and walking on the roadway during the time needed:

a. To travel to or from a motor vehicle whose occupant has signaled the individual to approach, and

b. To engage in transactions allowed by subsections (b)(2) and (b)(3).

(3) *Median*. Violate section 66-12 (standing, sitting, and walking on median generally prohibited).

(4) *Animals*.

a. Be accompanied by an animal, provided that an individual with a disability may be accompanied by a service animal trained to assist the individual with the individual's specific disability, upon a showing of a tag, issued by the state department of health and human services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. An animal in training to become a service animal may accompany the individual for the purpose of training only when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training.

b. Without limiting subsection (c)(4)a., an individual with a disability may be accompanied by a dog when:

1. The individual states that the dog is required because of the individual's disability, and the individual describes work or tasks the dog has been trained to perform, or

2. It is readily apparent that the dog is trained to do work or perform tasks for an individual with a disability. The crime deterrent effects of a dog's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this subsection.

(5) *Daylight*. Be in the solicitation-restricted right-of-way between 20 minutes before sunset and 20 minutes after sunrise. For purposes of this subsection, there is a rebuttable presumption that the United States Naval Observatory's times, as provided by the astronomical applications department or its successor division or department within the naval observatory, for sunset and sunrise are correct.

(6) *Reserved*.

(7) *Reflective outerwear*. Fail to wear class II or class III ANSI 107-2004 outerwear:

a. That is reasonably clean and in good repair, and

b. On which the total area covered by all things (except for clear plastic that does not affect the reflectiveness of the outerwear) resting on or attached to it is less than a total of four square inches.

(8) *Signs in general*. Display a sign larger than two feet in any dimension, or display anything with illuminated, animated, blinking, chasing, flashing, or moving effects that can be seen by a person with 20-20 vision from a distance of four feet.

(9) *Signs in violation of UDO.* Display a sign or other device in the solicitation-restricted right-of-way that is in violation of the UDO.

(10) *Reserved.*

(11) *Safe passage of pedestrians.* Interfere with the quick and safe passage across the roadway of pedestrians.

(12) *Normal movement of pedestrians.* Impede the normal movement of pedestrians.

(13) *Littering and traffic laws.* Violate any litter or traffic safety laws, including G.S. 14-399, G.S. 20-174.1, and G.S. 20-175.

(14) *Removal of goods.* Fail to remove all goods in connection with soliciting from the solicitation-restricted right-of-way when the individual is more than 50 feet away from any such item. The phrase "goods used in connection with soliciting" means goods that the individual offered for sale or delivery to occupants of motor vehicles; structures, devices, things, and materials of any kind used to transport, protect, display, advertise, offer, or sell any goods; food brought for consumption by the individual; food partly consumed by the individual; and packaging for food or drink consumed in whole or in part by the individual or an animal accompanying the individual.

(15) *Work zones.* Be in a work zone or stop or attempt to stop a motor vehicle that is in a work zone. A "work zone" is the area between the first sign that informs motorists or drivers of the existence of a work zone, construction zone, maintenance zone, utility work zone, or similar warning on a street and the last sign that informs motorists or drivers of the end of the zone, regardless of whether a sign states the penalty for speeding in the zone. Work zones are designated as such if the secretary of the state department of transportation or the city manager determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition; or if the posting is done at the direction of or with the consent of a governmental body or official having jurisdiction. The direction or consent may be given by any appropriate manner, including incorporation into specifications of a contract. There shall be a rebuttable presumption that any posting of a work zone has been done with the consent of a governmental body or official having jurisdiction.

(16) *Access ramps.* Be on an access ramp.

(17) *Bridges.* Be on a bridge, or on the portion of a street leading to or from a bridge that is within 100 feet of the bridge. In this subsection, "bridge" is limited to a bridge that contains a roadway.

(d) Litter. Any goods, structures, devices, things, and materials not removed in accordance with subsection (a)(14) shall be considered litter pursuant to section 26-123. Nothing in this section is intended to limit the effect of chapter 26.

(Code 1982, § 17-54; Ord. No. 12890, § 1, 11-17-2003; Ord. No. 14375, § 4, 12-17-2012; Ord. No. 14580, § 1, 2-20-2014)

Sec. 54-87. - Exceptions for public service activities, compliance with law enforcement directions, and emergencies.

Section 54-84 does not apply to licensees, lessees, franchisees, permittees, employees, or contractors of the city or of the N.C. Department of Transportation engaged in inspection, construction, repair, or maintenance or in making traffic or engineering surveys, or any of the following persons while engaged in the performance of their respective occupations: firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel, emergency management personnel (including emergency management workers defined by G.S. 166A-19.60(e)), solid waste personnel, recycling personnel, public works personnel, or public utility employees. Section 54-84 does not apply to the extent that law enforcement personnel direct otherwise for the

purpose of promoting safety of persons or property or to address an emergency. Section 54-84 does not apply to actions taken in response to an emergency.

(Code 1982, § 17-57; Ord. No. 12890, § 1, 11-17-2003; Ord. No. 14375, § 4, 12-17-2012; Ord. No. 14580, § 2, 2-20-2014)

Sec. 54-88. Prohibition on use of sales vehicle and sales gear to sell on street right-of-way; vending machines.

(a) Except to the extent authorized by this article (including section 54-91) or by provisions that are authorized by this article to be placed in a permit, no person shall engage in right-of-way sales activities, as defined in section 54-26

(b) This section does not prohibit right-of-way sales activities on the portion of a street that is closed or blocked.

(c) This section does not prohibit or otherwise affect an automatic vending machine on a sidewalk that sells only printed matter if the machine does not impede lawful travel on the sidewalk. To qualify under this exception, the vending machine must also be placed so as to allow at least four feet of unobstructed space for pedestrians. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200 feet of the vending machine, there is no passing space for pedestrians that is at least five feet by five feet, the vending machine must be placed so as to allow at least five feet of unobstructed space for pedestrians.

(d) Compliance with this article does not excuse or exempt any person from compliance with other applicable laws.

Sec. 54-91. Right-of-way sales activities.

(a) Exemption from subsection 54-88(a). Right-of-way sales activities done in compliance with this section are exempt from subsection 54-88(a), provided, however, that to qualify for this exemption, the only goods that may be offered for sale or sold are (i) food and (ii) newspapers and other material the sale of which is protected by the First Amendment to the U.S. Constitution through the application of the 14th Amendment to the U.S. Constitution. The provisions of this section apply to only persons claiming an exemption from subsection 54-88(a).

(b) Location on street right-of-way; use of parking and loading spaces. No person shall allow sales gear to be placed on any street right-of-way other than paved sidewalk, core downtown park, or paved on-street parking space. No sales gear other than a motor vehicle shall be placed on an on-street parking space. Such vehicles shall comply with ordinances that apply to occupying such spaces, including parking ordinances limiting the time that a parking space may be occupied. The sales gear for one sales vehicle shall not be placed in more than one on-street parking space. No sales gear shall be placed in loading zones.

(c) Use of property of others. No sales gear in the street right-of-way shall rest on or be attached directly or indirectly to public or private property unless the seller or salesperson has permission of the property's owner or other person who has authority to grant permission. This subsection does not prohibit resting sales gear on curbs that are less than eight inches high and on surfaces on which driving motor vehicles or walking (other than steps) is allowed.

(d) Seating, tables, etc. Sales gear shall not include seating for customers. Tables are allowed as sales gear only when a wheeled cart or motor vehicle is also part of the sales gear. Sales gear shall not include tables

or other surfaces that are used by customers to consume or use purchases from sellers. Sales gear may include a maximum of one seat for each salesperson. Sellers and salespersons shall not allow customers to use those seats, and customers shall not use those seats. No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street.

(e) Minimum distances. No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street. All sales gear must be placed so as to allow at least four feet of unobstructed space for pedestrians on sidewalks, on pedestrian paths, and on other locations intended primarily for pedestrian travel. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200 feet of sales gear, there is no passing space for pedestrians that is at least five feet by five feet, sales gear must be placed so as to allow at least five feet of unobstructed space for pedestrians. All sales gear must be at least ten feet from street intersections, crosswalks, bus shelters, taxi stands, building entrances and exits, fire stations, police stations, and fire hydrants. All sales gear of one seller must be at least ten feet from all sales gear of all other sellers operating under this division, except that this sentence does not require a minimum distance between one motor vehicle parked in an on-street parking space and another motor vehicle parked in an on-space parking space. A street intersection is the point at which the edge of one street's roadway meets the edge of another street's roadway. All sales gear must be at least 20 feet from any automated teller machine and from all entrance doors and exit doors of banks, credit unions, and savings and loan associations. All sales gear must be outside of each area that is described as follows:

Beginning at the post on which a bus stop sign is attached, and running against the direction of traffic, along the edge of pavement a distance of 40 feet to a point; from that point, on the line that is perpendicular to the roadway, a distance of ten feet from the roadway; from that point, running with the direction of traffic parallel with the edge of pavement a distance of 40 feet; from that point, on the line that is perpendicular to the roadway, a distance of ten feet to the post on which the bus stop sign is attached, the point of beginning.

(f) Distance from restaurants.

(1) This subsection (1) applies to restaurants neither holding a permit issued pursuant to section 54-110 nor lawfully providing one or more tables at which its customers may eat while seated outside on private property. Sellers that sell food must not, within 50 feet of the principal entrance for customers of a restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.

(2) This subsection (2) applies to a restaurant that (i) holds a permit issued pursuant to section 54-110, and pursuant to and in compliance with the permit the restaurant has placed one or more tables in an outdoor dining area, at which tables the restaurant's customers may be seated in order to dine; or (ii) lawfully provides one or more tables at which its customers may eat while seated outside on private property. Sellers that sell or offer to sell food must not, within the greater of 50 feet from any edge of any such table or 50 feet from the principal entrance for customers of the restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.

(3) For restaurants to which subsection (1) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant. For restaurants to which subsection (2) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, while seated at a table in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant, while seated in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property.

(4) For purposes of this subsection (f) but not for other portions of this article:

A building is a structure with walls and a roof. When it was erected, the building must have been designed and constructed to be usable for at least ten years, although it need not have been designed and constructed as a restaurant.

Inside and outside refer to locations inside or outside a building.

Outdoor dining area is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an area on a public sidewalk, public alley or pedestrian way whereon tables, chairs, benches, and other furnishings are placed for dining purposes.

Pedestrian way is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an improved walk or passageway on public property or right-of-way intended for use by pedestrians, but not adjacent to any city street.

Private property is land that is not a public sidewalk, public alley, or a pedestrian way.

A restaurant is an establishment engaged in the business of preparing and serving meals at retail for pay. It must have a kitchen and inside seating for at least ten individuals to eat food provided by the restaurant. The following are not included in determining seating capacity: (1) seats in a bar or lounge area; (2) seats in a separate room or section used exclusively for private functions; and (3) outside seats. This definition of restaurant applies to this subsection instead of any other definition of the word elsewhere in the City Code.

(g) Garbage and recycling; litter. Sellers and salespersons shall provide, on or within 15 feet of all sales vehicles, containers of sufficient size and number for the disposal of garbage and recyclables resulting from the sales. They shall be conspicuously identified as being available for the disposal of garbage or recyclables. At least once per hour of operation, and between ten and 30 minutes after the last sale, excluding mere offers to sell, of the day, sellers and salespersons shall remove all litter (that is not in an appropriate container) resulting from the sales that has accumulated on, or within 15 feet of, sales vehicles. In complying with the preceding sentences of this subsection, city-provided containers shall not be used. Nothing herein is intended to limit the effect of City Code chapter 10 (garbage, other solid waste).

(h) Fire extinguishers. No deep fat fryer, flat top grill, or any other equipment that can produce grease vapors shall be used unless it is on a wheeled cart or motor vehicle. When sellers and salespersons use a deep fat fryer, a flat top grill, or any other equipment that can produce grease vapors, they must have on the wheeled cart or motor vehicle a minimum of ten pounds-ABC type fire extinguisher. Sellers and salespersons shall immediately prove compliance with this subsection upon the request of the city manager or any sworn law enforcement officer.

(i) Reserved.

(j) Signs. The only signs used as sales gear are signs allowed by this subsection. Two types of signs are allowed as sales gear, moveable and non-moveable signs. Both types of signs shall promote, advertise, or facilitate the sale of goods sold by direct use of that sales vehicle. Both types of signs shall have no other content. In this subsection, "sign" is defined as in article 11 of the Unified Development Ordinance (UDO). Nothing in the UDO, including article 11 (sign standards), shall reduce the requirements established by this article.

(1) A moveable sign is a freestanding sign placed on a paved sidewalk and not attached directly or indirectly to any public or private property. It shall not exceed two and one-half feet in width or four feet in height. As a further limitation, no dimension of a moveable sign as placed in use on a sidewalk shall exceed four feet. The entire moveable sign must be placed within 30 feet of the sales vehicle to which it is associated. A seller is allowed to place one moveable sign per sales vehicle, but if one salesperson uses more than one sales vehicle, no more than one moveable sign is allowed for all the sales vehicles used by that salesperson. Moveable signs shall comply with the requirements of sales gear. Moveable signs must be kept in good condition.

(2) All non-moveable signs must be securely attached to a sales vehicle.

(k) Location of customer. When a customer is within 50 feet of a salesperson, the salesperson shall not engage in any right-of-way sales activity with the customer, such as selling goods or accepting payment, while the customer is in an on-street parking space, on a roadway, or in a motor vehicle regardless of the motor vehicle's location.

(l) Reserved.

(m) Unattended sales gear. Sellers and salespersons shall remove all sales gear from street right-of-way when the sales gear is not attended by a responsible individual for longer than ten minutes.

(n) Registration. Each seller selling food shall register and pay the registration fee in an amount set by the city council. Registration expires at the end of each June 30. Each seller shall promptly notify the city manager of changes to the seller's mailing address. While engaged in selling food pursuant to this section, all sellers and salespersons shall immediately show the registration receipt issued by the city upon request of any city employee or any sworn law enforcement officer.

Sec. 54-110. Outdoor Seating Area.

(a) *Permit issued by manager.* The city manager or his or her designee may issue permits for outdoor seating areas pursuant to this section on city maintained public rights of way, city sidewalks, public alleys and pedestrian ways in the design districts as depicted on the City's official zoning map.

(b) *Application.* Any eating establishment, restaurant, or private club desiring to operate an outdoor seating area shall, before the issuance of a permit, prepare and file an application with the city manager or his or her designee which shall contain the following information:

- (1) The name, address, and telephone number of the eating establishment, restaurant, or private club desiring to operate an outdoor seating area;
- (2) The name, address and telephone number of each of the eating establishment's, restaurant's, or private club's operators;
- (3) The type of food, beverage, and other products to be sold and served at the outdoor seating area;
- (4) The hours of operation of the eating establishment, restaurant, or private club and the proposed hours of operation of the outdoor seating area;
- (5) A scaled drawing or site plan showing the proposed outdoor seating area boundary and surrounding streetscape details covering six feet on either side of the frontage of the associated

eating establishment, restaurant, or private club, including but not limited to property lines, sidewalks, curb lines, lighting, trees including tree size, tree grates, planters, street signs, bicycle parking, benches, bus stops, and fire hydrants. The drawing shall show the section of sidewalk, public alley or pedestrian way to be used for the outdoor seating area and the section to be kept clear for pedestrian use, and depict the proposed materials and placement of tables, chairs, barriers, and other furnishings on the sidewalk, public alley or pedestrian way.

- (6) Evidence of a valid insurance policy that will indemnify the city for any damage to the sidewalk or public alley, and for any damages for which the city might incur liability because of property damage or personal injury arising out of the use of the sidewalk, public alley or pedestrian ways for seating purposes. The minimum liability limit of the policy shall be one million dollars (\$1,000,000).
 - (7) An indemnity statement, approved by the city attorney, whereby the eating establishment, restaurant, or private club owners agree to indemnify and hold harmless the city and its officers, agents and employees from any claim arising from the operation of the outdoor seating area.
 - (8) A copy of all permits and licenses issued by the state or the city, including health permits, all applicable ABC permits and business licenses, necessary for the operation of the eating establishment, restaurant, or private club, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the eating establishment, restaurant, or private club.
 - (9) A sworn statement describing all criminal, civil or administrative charges against the eating establishment's, restaurant's, or private club's operators of any laws, regulations or ordinances, as well as the disposition of said charges, during the three years immediately preceding the date of the permit application.
 - (10) Such additional information as may be requested by the city manager or his or her designee to determine compliance with this section.
 - (11) A fee as provided in the city fee schedule to cover the cost of processing and investigating the application and issuing the permit.
- (c) *Issuance of Permit.* No permit for the operation of an outdoor seating area may be issued unless the application is complete and unless the following requirements are met:
- (1) The outdoor seating area must be associated with an operating eating establishment, restaurant, or private club such that it is under the same management and shares the same food preparation facilities, restroom facilities and other customer convenience facilities as the eating establishment, restaurant, or private club. The outdoor seating area must be operated under the same name as the eating establishment, restaurant, or private club and may not be open or be operated at any time when the eating establishment, restaurant, or private club is not open for business.
 - (2) The operation of the outdoor seating area must be clearly incidental to the associated eating establishment, restaurant, or private club business. The seating capacity of the outdoor seating area may not constitute more than 25 percent of the total seating capacity of the associated eating establishment, restaurant, or private club. Upon showing for good cause by the applicant, the City Manager reserves the right to allow the seating capacity of the outdoor seating area to constitute up to 40 percent of the total seating capacity of the associated eating establishment, restaurant, or private club.
 - (3) Tables, chairs, barriers, and other furnishings, as shown in the drawing or plan submitted with the permit application, may be placed on the sidewalk, public alley or pedestrian way, but must be located in such a manner so that a minimum six-foot-wide unobstructed pedestrian corridor shall be provided at all times through the sidewalk or pedestrian way. The outdoor seating area shall not block access to public amenities such as bicycle racks, street furniture, trash receptacles, dumpsters, and way finding or directional signs.

- (4) The eating establishment, restaurant, or private club seeking to operate the outdoor seating area must be located at street level and must front on and open onto the sidewalk, public alley or pedestrian way proposed for the outdoor seating area. An unobstructed pedestrian corridor of a minimum of four feet straight out must be maintained between any eating establishment, restaurant, or private club entrance and the pedestrian corridor.
 - (5) When any portion of the proposed outdoor seating area is located within a public alley, the name, address and telephone number of all property owners contiguous to the public alley at issue.
 - (6) The outdoor seating area may not extend beyond the sidewalk, public alley or pedestrian way frontage corresponding to the property line of the eating establishment, restaurant, or private club. However, outdoor seating areas in which alcoholic beverages will not be served may locate in front of adjacent properties with the written permission of the current adjoining property and business owner; a copy of such agreement must be filed and maintained as current with the application.
 - (7) The outdoor seating area may be located adjacent to the building or next to the curb, provided there is at least two feet of clearance between the seating area and the curb (three foot clearance if adjacent to on-street parking). A minimum clearance of four feet shall be maintained between the outdoor seating area and edge of driveways, alleys, and handicapped ramps. At street intersections, the outdoor seating area may not extend within sight triangles. At bus loading and unloading areas, additional clearances may be required.
 - (8) Wider pedestrian corridors or increased clearances may be required where warranted by pedestrian traffic or other circumstances or to comply with the North Carolina Building Code, Americans with Disabilities Act, or other laws.
 - (9) The tables, chairs, barriers, and other furnishings used in the outdoor seating area shall be of a type that is easily movable. These items shall not be permanently affixed to the sidewalk, public alley or pedestrian way and must remain within the designated boundaries as delineated by city-installed sidewalk markers.
 - (10) Except as elsewhere permitted, the operation or furnishing of the outdoor seating area shall involve no permanent alteration to or encroachment upon any street, sidewalk, public alley or pedestrian way or to the exterior of the associated eating establishment, restaurant, or private club.
 - (11) No tents or cash registers are permitted within the outdoor seating area. No electrical cords may be run from the eating establishment, restaurant, private club, or a city receptacle to the outdoor seating area.
 - (12) Except as required by subsection (d)(4) below, signage in the outdoor seating area shall conform to the applicable signage standards provisions of the UDO.
 - (13) There can be no more than two umbrellas per table. Umbrellas must be fixed so as to leave a clear height of seven feet from the sidewalk surface. Umbrellas are not allowed within vehicular sight triangles.
 - (14) Furniture must be made of durable material, and no plastic or unfinished wood furniture is permitted.
 - (15) The application has been reviewed and a certificate of appropriateness has been issued by the Historic Preservation Commission, or designee, if applicable.
- (d) *Alcoholic beverages.* Notwithstanding the provisions of Sec. 46-149, alcoholic beverages may be served at outdoor seating areas provided the following requirements are met:
- (1) The outdoor seating area shall be part of a standard eating establishment, restaurant, or private club as those terms are defined in G.S. §18B-1000, and shall otherwise be authorized, permitted or licensed under state laws and the city code to serve and sell alcoholic beverages for on-premise consumption.

- (2) The portion of the outdoor seating area where alcohol is or may be served shall be delineated by clearly visible barriers and shall not have more than two designated points of ingress and egress.
- (3) The outdoor seating area must be included as part of the premises for which an ABC permit for an eating establishment, restaurant, or private club, as defined in G.S. §18B-1000, is issued, pursuant to G.S. §18B-1001, for the purpose of applying and enforcing state laws regarding the sale and consumption of alcoholic beverages on-premises.
- (4) Signs shall be posted, visible at all designated exit points from the outdoor seating area, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. The eating establishment, restaurant, or private club operators shall be responsible for insuring that no alcohol is served or consumed outside the designated area.
- (5) None of the eating establishment's, restaurant's, or private club's operators shall have committed:
 - (a) a felony within the three years immediately preceding the date of the permit application; or
 - (b) any alcoholic beverage or controlled substance offense within the two years immediately preceding the date of the permit application.

For purposes of this section, a person has committed an offense when he has been found guilty, has entered a plea of guilty or nolo contendere, and judgment has been entered against him, whether or not said judgment is final; or been found responsible or accepted responsibility with any civil or administrative body.

(e) *Operation, Appearance, and Maintenance Requirements.* An outdoor seating area shall be operated in such a manner to comply with the following requirements:

- (1) Outdoor seating is limited to the area approved by the city as specified on the permit application.
- (2) No more patrons than can be accommodated by the actual seats provided in the outdoor seating area may occupy the outdoor seating area. This does not include patrons travelling through the outdoor seating area to enter or exit the eating establishment, restaurant, or private club.
- (3) Except for planters and pots, all furniture, barriers and associated furnishings, including but not limited to umbrellas, signage, table top candles, and other accessory items, shall be removed from the sidewalk, public alley or pedestrian way at closing and stored inside the eating establishment, restaurant, or private club, unless otherwise provided in the approved permit. In addition, planters, pots, furniture, associated furnishings, and barriers used in the operation of the outdoor seating area must be removed within twenty-four (24) hours of notice from the city. If such items are not removed upon twenty-four (24) hours notice, the city shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The city shall also have the right to remove such items immediately in emergency situations.
- (4) Eating establishment, restaurant, or private club operators shall keep the outdoor seating area clean of all litter as required by Sec 26-123 of the Durham City Code.
- (5) Umbrellas and other outdoor dining area furniture shall be kept clean and in good repair.
- (6) Compliance with all conditions required for issuance of an outdoor seating area permit shall be maintained while operating pursuant to the permit.
- (7) The city shall not be responsible for damage to outdoor seating area tables, chairs, barriers, furnishings and accessories of any kind under any circumstances.
- (8) The eating establishment, restaurant, or private club owners shall be responsible for repairing any incidental damage to any city property resulting from the operation of the associated outdoor seating area. Any repair work shall be in accordance with applicable federal, state, and local laws, regulations and standards.

- (f) *Reservation of rights.* The city reserves the right to require any outdoor seating area established pursuant to this section to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city.
- (g) *Transfer and expiration.* The permit shall not be transferable. A permit shall expire as stated on the permit, but no more than 12 months after its issuance. The permit may be revoked pursuant to section 54-141.

Sec. 54-112. Sales near DPAB.

- (a) *Sales near DBAP.* Nothing in section 54-91 shall allow sales on street right-of-way in the Durham Bulls Athletic Park (DBAP) area during the period of 90 minutes before the scheduled time of any Durham Bulls baseball game in the DBAP until 30 minutes after the official end of the game. The DBAP area is defined to be the area bounded by Roxboro Street, Pettigrew Street, Julian Carr Street, and Highway 147. The DBAP area includes the land that would be within Julian Carr Street if that street were extended, from its current southern terminus with the same right-of-way width that it has at that southern terminus, to intersect with Highway 147. The DBAP area includes the land contained within the street right-of-way of the four streets that bound the DBAP area.
- (b) *Sales near DPAC.* Nothing in section 54-91 shall allow sales on street right-of-way in the DPAC area during the period of 90 minutes before the scheduled time of any event in the DPAC until 30 minutes after the scheduled end of the event. For purposes of this subsection, an "event" in the DPAC is a performance or other activity that the person designated by the city manager or city council as the operator of the DPAC estimates is likely to draw an audience of at least 500 individuals to the DPAC, and the scheduled time and end of an event shall be as determined by said operator. This subsection shall be apply only with respect to events for which the operator has provided to the city manager, at least 20 days before the day of the event, a written statement of the nature of the event, the date of the event, and its scheduled time and end. The DPAC area is defined to be the area bounded by Roxboro Street, Pettigrew Street, Julian Carr Street, and Highway 147. The DPAC area includes the land that would be within Julian Carr Street if that street were extended, from its current southern terminus with the same right-of-way width that it has at that southern terminus, to intersect with Highway 147. The DPAC area includes the land contained within the street right-of-way of the four streets that bound the DPAC area.

Sec. 54-114. Sales on closed or blocked streets in conjunction with special-event permits.

Except to the extent a special-event permit otherwise provides, no person other than the special-event permittee shall engage in right-of-way sales activities on the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. Except to the extent a special-event permit otherwise provides, subsection 54-88(a) does not apply to the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. Except to the extent otherwise provided by the permit and subject to such terms and conditions as the city manager deems proper, the permittee may create exceptions to the prohibition established by the first sentence of this section on the closed or blocked street

Sec. 54-115. Sales at permitted events in city parks, plazas, and properties.

- (a) *Definition of permitted sales location.* When a special-event permit is in effect for a park, plaza, or other property and the park, plaza, or other real property is owned or controlled by the city, the places in such park, plaza, or other property where the permittee or other persons are authorized by the permit to sell goods or to authorize others to sell goods are collectively referred to in this section as the "permitted sales location."

(b) *Prohibition of right-of-way sales activities.* No person shall engage in right-of-way sales activities on a permitted sales location except as authorized by the permit. If the permit authorizes activities that include selling goods on only a portion of the park, plaza, or other real property, no person shall engage in right-of-way sales activities elsewhere on the park, plaza, or other property. The permit may provide for exceptions to the prohibitions created by this subsection.

(c) *Authority to issue permits.* The city manager is authorized to issue the permits described in this section. The permit may contain such terms and conditions as the city manager deems proper. The permit may provide that only sellers specified in the permit, and/or only sellers authorized by the permittee, may sell goods on a specified portion or all of the park, plaza, or property.

Sec. 54-116. Exemption for newspaper distribution.

Except to the extent otherwise explicitly provided by an order or permit referred to in section 54-114 or section 54-115, the orders and permits shall not be construed to prohibit the distribution of newspapers within the nontraveled portion of any street. This rule of construction does not apply to the extent the newspaper distribution activities impede the normal movement of traffic on the street.

Sec. 54-118. Right-of-way sales activities presumed subject to section 54-88.

Unless otherwise provided, section 54-112, section 54-114, and 54-115 are subject to section 54-88 with respect to right-of-way sales activities.

Sec. 54-140. Display of permit.

All individuals conducting any activity for which a permit is required under this article and all permittees shall (1) immediately show the permit upon request of the city manager or any sworn law enforcement officer, and (2) prominently display the permit at all times while conducting any activity for which a permit is required under this article so that the permit is easily seen and not covered and so that the text of the permit can be read by the public without their having to ask to see it. The city manager may amend an already-issued permit to impose, as additional conditions of the permit, additional requirements respecting the posting of permits. Those amendments shall be effective on the fourth day after the notice of amendment is mailed to the permittee's address as stated in the permit application.

Sec. 54-188. - Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the manager. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate, shall be named as the hearing officer to conduct a hearing

in order to review the assessment. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the city manager may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The city manager may compromise such claims, before or after commencement of the civil action, if the city manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the city manager may abandon a claim.

(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of vehicles, each violation of this article, including the terms of a permit, is a misdemeanor, for which the maximum fine shall be \$500.00.

(e) *Reserved.*

(f) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying section 1-9(e), the City Council intends that termination and revocation of a permit be considered to be remedies.

Sec. 54-261. Begging or soliciting alms or contributions.

(a) Definitions:

Accosting another person means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act or damage to property in his or her immediate possession.

Forcing oneself upon the company of another person means:

- (1) Continuing to request or solicit alms or contributions in close proximity to the person addressed after that person has responded negatively;
- (2) Blocking the passage of the person addressed; or
- (3) Otherwise engaging in conduct that reasonably could be understood as intended to force a person to accede to demands.

Public place includes streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property and private property held open to the public unless permission to solicit has been obtained from the city or from the private property owner or other person in authority.

To beg or solicit alms or contributions includes the spoken, written, or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms or contributions.

(b) It shall not be unlawful to beg or solicit alms or contributions except when performed in the following manner:

(1) In a public place by accosting another person or forcing oneself upon the company of another person;

(2) Within 20 feet of an entrance or exit of any bank or financial institution or within 20 feet of any automated teller machine;

(3) In any public transportation vehicle owned or operated by the city or at any terminal or station for such vehicle or within six feet of a stop for such vehicle; or

(4) In a public place during the time period that begins 20 minutes after sunset and ends 20 minutes before sunrise. For purposes of enforcement of this section, the terms "sunrise" and "sunset" shall be determined by and based on the times for those events published daily by the U.S. Naval Observatory Astronomical Applications Department.

(Code 1982, § 12-28; Ord. No. 10186, § 1, 6-20-1994; Ord. No. 11950, § 1, 4-3-2000; Ord. No. 12948, § 1, 6-10-2004)

ARTICLE VI. - CONTACT WITH AND INTRUSION INTO OCCUPIED VEHICLES ON ROADWAYS

Sec. 54-263. - Definitions.

The definitions in section 54-26 for the following words are incorporated: occupant, motor vehicle, roadway, and tangible thing.

Enclosed vehicle means a motor vehicle, excluding every vehicle designed to run upon the streets that is pulled by a self-propelled vehicle.

(Ord. No. 14581, § 1, 2-20-2014)

Sec. 54-264. - Contact with and intrusion into occupied motor vehicle.

It is unlawful for a pedestrian to place a tangible thing or any part of his or her body on or inside an occupied enclosed vehicle that is on the roadway. This section is not intended to repeal or affect any other provision in this Code or any authority to act provided for by any other provision in this Code. This section does not apply:

(1) If the pedestrian has a right to possess, occupy, or use the vehicle, or the consent of a person with a right to possess, occupy, or use the vehicle;

(2) If the pedestrian has an ownership interest in the vehicle, or the consent of a person with an ownership interest in the vehicle;

(3) If an occupant requests that the pedestrian take that action or consents to the taking of the action; or if an occupant requests that the pedestrian deliver the tangible thing to an occupant or consents to such delivery; or if an occupant requests that the pedestrian receive a tangible thing from an occupant or consents to receiving it;

(4) To the following persons while engaged in the performance of their respective occupations:

a. Persons authorized by a governmental person to take the action; or

b. Firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel, emergency management personnel, or emergency management workers (defined by G.S. 166A-19.60(e));

(5) To the extent that firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel, emergency management personnel, or emergency management workers (defined by G.S. 166A-19.60(e)) direct otherwise for the purpose of promoting safety of persons or property or to address an emergency; or

(6) To actions taken in response to an emergency.

(Ord. No. 14581, § 1, 2-20-2014)

Durham City Code Chapter 58, Solid Waste

Sec. 58-100. Unauthorized use of bulk refuse containers.

It shall be unlawful for any person to place material in a bulk refuse container situated upon private property unless such person owns or occupies the property, or is an employee or agent of such owner or occupant, or has been given written permission by the owner or occupant to use such container.

(Code 1964, § 9-19.2; Code 1982, § 10-57; Ord. No. 5369, § 1, 4-21-1980; Ord. No. 13263, § 2, 6-5-2006)

Durham City Code Chapter 66, Traffic and Parking

Sec. 66-1. Adoption of definitions in General Statutes.

The definitions set out in G.S. 20-4.01, are hereby adopted as a part of this chapter.
(Code 1964, § 12-1; Code 1982, § 20-1)

Sec. 66-2. Other definitions.

In addition to the definitions adopted in section 66-1, the following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them herein:

Driver means every person who drives or is in actual physical control of a vehicle.

Official traffic-control devices means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of any public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic. This includes official traffic signals.

Official traffic signals means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Parking means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Pedestrian means any person afoot.

Police officer means any officer of the municipal police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Standing means any stopping of a vehicle whether occupied or not.

Stop when required, means complete cessation of movement.

Stop or *stopping* when prohibited, means any stopping of a vehicle except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or official traffic-control devices.

(Code 1964, § 12-2; Code 1982, § 20-2)

Sec. 66-6. Same--Persons propelling pushcarts or riding bicycles or animals.

Every person propelling any pushcart or riding a bicycle or an animal upon a roadway, and every person driving any animal-drawn vehicle shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions of this chapter which by their very nature can have no application.
(Code 1964, § 12-7; Code 1982, § 20-6)

State law references: Similar provisions as to riding animals, G.S. 20-171.

Sec. 66-9. Unauthorized entry and assembly in city owned or operated parking facilities.

(a) The term "city owned or operated parking facility" means any parking garage or lot owned by, leased to, and/or operated by or for the city for the purpose of providing public parking.

(b) It shall be unlawful for any person to assemble with one or more other persons on a city owned or operated parking facility except for the purpose of lawfully parking or removing a vehicle in the facility. It shall not be a violation of this section to lawfully park a vehicle in a city owned or operated parking facility and leave the facility without delay or go upon a city owned or operated parking garage or lot and without delay proceed to a lawfully parked vehicle to exit the parking facility.

(c) It shall be unlawful for any person to enter upon or remain in a city owned or operated parking facility unless:

(1) Such person is the owner, operator or passenger of a motor vehicle entering, leaving or parked in such parking facility;

(2) Such person is an employee of the city regularly charged with the operation, maintenance or supervision of such parking facility; or

(3) Such person has been previously authorized by an agent or employee of the city to enter upon such parking facility.

(d) This section shall not apply to an assembly of persons pursuant to any lawfully issued permit for a parade, demonstration or other event or congregation protected under the Constitution of the United States or of this state.

(Code 1964, §§ 13-4.4, 13-31; Code 1982, § 12-9; Ord. No. 11686, § 1, 5-17-1999)

Sec. 66-10. Distribution of items in city parking garages and city off-street parking lots.

It shall be unlawful for any person to pass out a leaflet or any other item or thing to any person in the city parking garages or on any of the off-street parking lots of the city. This section shall not apply to the operator or passengers of a vehicle in the city parking garages or on any of the off-street parking lots of the city who pass out a leaflet or other item or thing to the operator or any passengers of the same vehicle while the operator or passengers are:

(1) In the vehicle;

(2) Traveling between an entrance and exit of the garage or lot; or

(3) Traveling between an exit and entrance of the garage or lot.

(Code 1964, § 13-4.2; Code 1982, § 12-5(b))

Sec. 66-11. Damaging, defacing property, street signs.

It shall be unlawful for any person to mutilate, deface, remove or, in any manner, damage any of the street signs, traffic signs or other signs of similar nature erected by any public governing body.

(Code 1964, § 19-21; Code 1982, § 12-12)

Sec. 66-12. Standing, sitting, and walking on median generally prohibited. No person shall stand, sit, or walk on a median, provided that this section does not prohibit a person from taking such actions during the time needed to travel safely from one side of a roadway to the opposite side of the roadway. In this section, the definitions of median and roadway as set forth in section 54-26 apply.

Sec. 66-108. Driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic.

(a) It shall be unlawful for any person to operate or cause to be operated any vehicle upon or across any curb, gutter or sidewalk in the city at any place other than the driveways constructed and designed for such use, unless such person shall first provide a protective covering of timber or other suitable materials over such curb, gutter and sidewalk, which will be adequate to completely prevent such curb, gutter and sidewalk from being damaged by the operation of such vehicle upon, over or across the same.

(b) It shall be unlawful for any person to operate, or cause to be operated, any vehicle or equipment upon or across any curb, gutter or sidewalk in the city at any place other than a driveway constructed and designed for such use, as provided in this Code, unless such person shall first secure a permit from the city authorizing the provision of a protective covering of timber or other suitable, approved, materials for such curb, gutter and sidewalk, which protective covering shall be adequate to completely prevent such curb, gutter and sidewalk from being damaged by the operation of such vehicle or equipment upon, over or across the same.

(c) No person shall place timber or other material at the curbing for the purpose of regularly driving across the curb or driveway, without having obtained a permit therefor.

(Code 1964, §§ 9-57, 12-55, 19-10; Code 1982, § 20-65)

Sec. 66-109. Driving on sidewalk.

It shall be unlawful for any person, other than as authorized in this chapter, to drive any vehicle upon the sidewalks of the city, subject to the following exceptions:

- (1) Driving across a sidewalk over and through an established driveway; or
- (2) Sworn law enforcement officers, security guards as defined by G.S. 74C-3(a)(6), or emergency medical technicians riding bicycles while in the discharge of their official duties.

State law references: Similar provisions, G.S. 20-160(b).

Sec. 66-113. Entering intersection or crosswalk when vehicle cannot be accommodated on other side.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any official traffic-control device's indication to proceed.

(Code 1964, § 12-59; Code 1982, § 20-70)

Sec. 66-114. Sounding horn or warning device in quiet zone.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of the vehicle except in an emergency.

(Code 1964, § 12-60; Code 1982, § 20-71)

Sec. 66-116. Operation in public parks.

(a) Except as may be allowed by subsection (b) of this section, it shall be unlawful for any person to drive a motor vehicle in any park, playground, or other recreational area that is operated by the city, except where specifically designated for such driving. As used in this section, a motor vehicle is a self-propelled vehicle. This term shall not include a device meeting all of the following requirements:

- (1) It is designated for and intended to be used as a means of transportation for a person with a mobility impairment;
- (2) It is suitable for use both inside and outside a building; and
- (3) Its maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(b) The city manager may make exceptions from subsection (a) of this section for:

- (1) Licensees, lessees, franchisees, permittees, employees, or contractors of the city engaged in inspection, construction, repair, or maintenance; or
- (2) Firefighting personnel, law enforcement personnel, or EMS personnel while engaged in the performance of their respective occupations.

(Code 1964, § 12-61.1; Code 1982, § 20-73)

Sec. 66-119. Heavy vehicles restricted.

It shall be unlawful for any person to drive or operate, or to cause or permit to be driven or operated in designated areas, any truck, semitrailer, van or other vehicle of any description, which truck, semitrailer, van or other vehicle, together with its load, weighs in excess of the established weight for such area, or with more axles than the number permitted in such area.

(Code 1964, §§ 12-70, 12-74; Code 1982, § 20-77)

Sec. 66-120. One-way streets.

Upon those streets and parts of streets which may be established and designated as one-way streets, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

(Code 1964, § 12-78; Code 1982, § 20-78)

Sec. 66-121. Obedience to directional signs and signals approaching and within intersecting streets.

Whenever the approach to a street intersection is clearly marked by marks, buttons, lettering or other indications or directional signs or symbols placed upon the surface of the street within traffic lanes approaching an intersecting street or upon overhead or other type signs, indicating that no right or left or "U" turn is permitted from such lane, or that such lane shall be used for left turn only, or that such lane shall be used for right turn only, or that such lane shall not be used for any turn or deviation from such lane, or other course of travel to be followed in such lane is indicated, it shall be unlawful for any person to disobey the directions of any such signs, symbols or indications and drive such vehicle in a direction contrary to the direction designated for vehicles using such traffic lane by such signs and other indications.

(Code 1964, § 12-99; Code 1982, § 20-79)

State law references: Power of local authorities with reference to turning at intersections, G.S. 20-153(c).

DIVISION 2. - TRUCK ROUTES

Sec. 66-147. Definitions.

As used in this division, the following definitions shall apply:

Cargo means any property transported by truck.

Operator means the person physically operating a truck or a person therein directing its operation.

Passenger means any person transported by truck.

Truck means any motor vehicle designed for carrying cargo or passengers which either has three or more axles or has two axles and a gross vehicle weight (GVW) rating of 18,000 pounds or more. Specifically excluded from the definition of a truck are school buses, charter buses and intracity buses; sanitation and refuse trucks when they are engaged in household pickups; and emergency vehicles, such as fire trucks.

(Code 1982, § 20-83; Ord. No. 5966, § 1, 7-19-1982)

Sec. 66-148. Initial access to truck route.

(a) *Trucks with points of origin outside the city limits.*

(1) The operator of a truck entering the city by way of a route that is not a designated truck route shall, upon entering the city, proceed to the nearest truck route.

(2) Subsection (a)(1) of this section notwithstanding, when the shortest route between the point of entry into the city and the destination of a truck is less than the shortest route from the point of entry into the city to the nearest designated truck route, the operator of the truck, upon entering the city, shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination.

(b) *Trucks with points of origin within the city limits.*

(1) Where the origin of a trip is within the city, the operator of a truck shall, upon leaving the origin of his or her trip, proceed by the shortest route to the nearest designated truck route.

(2) When the shortest route between the origin and destination of a truck of local origin is less than the distance between the origin and the designated truck route, the operator of a truck shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination. Also, when the shortest distance between the origin and destination of a truck of local origin is less than the distance between the destination and the designated truck route, the operator of a truck shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination.

(Code 1982, § 20-84; Ord. No. 5966, § 1, 7-19-1982)

Sec. 66-149. Use of designated truck routes.

Once the designated truck route is reached, the operator of a truck shall proceed on such designated truck route until he or she reaches a point on that route that allows him or her to proceed by the shortest route to his or her destination.

(Code 1982, § 20-85; Ord. No. 5966, § 1, 7-19-1982)

Sec. 66-150. Evidence of destination and origin.

The operator of any truck not on a designated truck route shall have a bill of lading delivery slip, dispatch order, or other reasonable evidence to show the points of destination and origin of the trip then in progress. Failure to have such evidence shall constitute a separate violation of this division.

(Code 1982, § 20-86; Ord. No. 5966, § 1, 7-19-1982)

ARTICLE IV. - STOPPING, STANDING AND PARKING

DIVISION 1. - GENERALLY

Sec. 66-171. Prohibited in certain categories of places.

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device, in any of the following places:

- (1) On a sidewalk.
- (2) In front of a public or private driveway.
- (3) Within an intersection.
- (4) On a crosswalk.
- (5) Within 25 feet from the intersection of curblines or if none, then within 15 feet of the intersection of property lines at an intersection of highways.
- (6) Within 50 feet of the nearest rail of a railroad crossing.
- (7) Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
- (8) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.
- (9) At any place where official signs prohibit stopping.
- (10) Upon the travel portion of the roadway or street such that said vehicle obstructs or impedes the flow of vehicular traffic. For purposes of this section obstruction of the flow of vehicular traffic shall mean at least stopping a vehicle, whether occupied or not, in such a manner that other vehicles must either come to a stop, or change traffic lanes.

(Code 1964, § 12-127; Code 1982, § 20-90; Ord. No. 6725, § 1, 5-20-1985)

State law references: Parking in front of fire hydrant, fire station or private driveway, G.S. 20-162

Sec. 66-175. Width of roadway to be left available.

(a) No person shall stop, stand, or park any vehicle upon a street other than an alley in such manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when necessary in obedience to traffic regulations or traffic signs or signals of a police officer.

(b) No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic.

(Code 1964, § 12-133; Code 1982, § 20-94)

Sec. 66-176. - Manner of parking generally.

(a) *In general.* No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within 12 inches of the edge of the roadway, except that upon those streets which have been marked or signed for angle parking vehicles, the vehicle shall stand or be parked at the angle to the curb indicated by such marks or signs.

(b) *Long vehicles.* The driver shall stand or park the vehicle entirely within the lines marking the space, except that a vehicle may occupy two spaces if it is too long to occupy one space, provided that this exception applies only when the spaces are parallel with the edge of the roadway.

(Code 1964, § 12-135; Code 1982, § 20-95; Ord. No. 14355, § 12, 11-5-2012)

Sec. 66-177. Angle parking generally.

When angle parking is authorized and lines painted on the surface of the street indicating that vehicles may be parked at an angle within the spaces between such painted lines, it shall be unlawful for any person to park a vehicle at such point in any way except at an angle to the curb, as indicated by the lines marking the space.

(Code 1964, § 12-138; Code 1982, § 20-96)

Sec. 66-178. Manner of parking trucks.

It shall be unlawful for any person to park a truck on any public street or drive in the city, either in the daytime or nighttime, except in a position parallel to and within 12 inches of the curb, unless permitted angle parking shall be plainly designated by lines painted upon the surface of the street indicating the angular spaces wherein parking may be effected. In any case in which angle parking is permitted and so designated by lines painted upon the street surface, as herein provided, it shall be unlawful for any person to park in such space so indicated if such truck is of such length as to allow less than two 12-foot wide lanes of traffic to remain open and available for moving vehicles using the street, except that, in the case of a one-way street, there shall be left open one lane for moving traffic.

(Code 1964, § 12-136; Code 1982, § 20-97)

Sec. 66-179. Backing vehicle into an angle parking space.

It shall be unlawful for any person to back a vehicle into a parking space on a public street, which parking space is marked or laid off at an angle to the curb or sidewalk, so that the rear rather than the front of such vehicle is placed at the curb or the inside of such parking space; provided, however, that nothing contained in this section shall affect the backing of a vehicle into a loading or unloading zone for the purpose of loading or unloading in accordance with the regulations applying to such loading or unloading zone.

(Code 1964, § 12-139; Code 1982, § 20-98)

Sec. 66-180. Parking for purpose of sale of vehicle.

No person shall stand or park a vehicle upon any roadway for the principal purpose of displaying such vehicle for sale.

(Code 1964, § 12-140; Code 1982, § 20-99)

Sec. 66-181. Parking for purpose of repair, etc., of vehicle.

No person shall stand or park a vehicle upon any roadway for the principal purpose of washing, greasing or repairing such vehicle, except repairs necessitated by an emergency.

(Code 1964, § 12-141; Code 1982, § 20-100)

Sec. 66-183. Parking on streets in fire district after snowfall--Restrictions.

It shall be unlawful for any person to park a vehicle or permit such vehicle to remain parked on any of the streets located in the fire district in the city after two inches of snow have fallen on such streets and before the snow has been removed from such streets. It shall further be unlawful for any person to fail to remove his or her parked vehicle from any of the streets in the fire district during the period hereinabove set forth. (Code 1964, § 12-143; Code 1982, § 20-102)

Sec. 66-184. Same--Removal of vehicle by public safety department.

In the event of a violation of section 66-183, the public safety department may cause the vehicle involved in the violation to be removed from the street at the cost of the owner thereof. (Code 1964, § 12-144; Code 1982, § 20-103)

Sec. 66-185. Limitation on parking time in particular city block.

In all cases in which, by any provision of this Code or other ordinance of the city, the parking of vehicles is limited and restricted to a stated period of time between the hours of 7:00 a.m., and 6:00 p.m., or any other hours which may be prescribed in the particular provision of this Code or other ordinance of the city regulating such parking, such stated period of time for which such parking is permitted shall mean the total period of time for which such vehicle may be parked within the same city block at either one or more parking spaces or locations within the same city block. It shall be unlawful for any person to park a vehicle either at the same place or at two or more places or parking spaces within the same city block for a combined total parked period in the same city block, during the regulated hours, in excess of the permitted period prescribed by the particular provision of this Code or other ordinance of the city regulating parking of vehicles on such street or portion of such street. The phrase "city block" as used in this section shall mean the portion of a street lying between the nearest intersecting streets and shall not include other streets running parallel, at right angles, or otherwise, to the street upon which such vehicle may be parked.

(Code 1964, § 12-148; Code 1982, § 20-105)

Sec. 66-186. Parking so as to block driveway as nuisance.

(a) The stopping, standing or parking of a vehicle in a street in front of the entrance to a public or private driveway so as to cause the blocking of such driveway and to prohibit the use of such driveway for the purpose of gaining access to and from the street is hereby declared to be a public nuisance.

(b) In addition to the penalties prescribed for the violation of this Code, insofar as such section relates to the stopping, standing or parking of a vehicle in front of a public or private driveway, in the event of the occurrence of a public nuisance as declared in subsection (a) of this section, such public nuisance may be summarily abated and, to that end, the police officers of the city shall cause any vehicle causing such public nuisance immediately to be removed from in front of the entrance to the public or private driveway in front of which the vehicle is stopped, standing or parked. In order to effect the abatement of such nuisance, the police officers shall employ towing apparatus and cause the vehicles to be towed away and stored for the use of the owner. The cost of such towing and storing shall be borne by the offender as a part of the cost of the enforcement of law.

(Code 1964, § 12-149; Code 1982, § 20-107)

Sec. 66-187. Parking of motor vehicles more than 6 1/2 feet in width on streets between 6:00 p.m. and 7:00 a.m.

It shall be unlawful for any person to park any motor vehicle of a width exceeding 6 1/2 feet on any of the public streets in the city between the hours of 6:00 p.m. and 7:00 a.m. following, except when necessary

to stop for the purpose of loading or unloading, and then only during the period in which such loading or unloading operation is being carried out.

(Code 1964, § 12-150; Code 1982, § 20-108)

Sec. 66-188. Construction of terms with reference to loading and unloading.

The terms "loading and unloading zone," "for the purpose of loading and unloading" and similar terms, wording or language as used in any provision of this chapter or other ordinance of the city establishing or designating areas in which the parking of vehicles is restricted to parking for the purpose of loading or unloading passengers or property shall be construed to apply only during the period in which the operation of loading and unloading is being engaged in and such provision of this chapter or other ordinance of the city shall not be construed so as to authorize the parking of vehicles in such area for any other purpose or duration of time.

(Code 1964, § 12-152; Code 1982, § 20-109)

Sec. 66-189. Parking in specified public vehicular areas.

(a) It shall be unlawful for the operator of any motor vehicle or any other vehicle to stop, stand or park said vehicle upon any public vehicular area as specified under subsection (b) of this section during the hours indicated for each area.

(b) Subsection (a) of this section applies to the public vehicular areas indicated by the city authorities during the hours indicated by the city authorities.

(c) The owner or person in general charge of the operation and control of a public vehicular area may petition the city council to include such area within the areas specified under subsection (b) of this section by filing a written request with the city manager. Any person who submits such a petition shall pay a fee in the amount set by the city council at the time the petition is submitted.

(d) The city manager shall cause notices to be posted at one or more locations within each area specified under subsection (b) of this section. The notices may be in the form of a sign or poster with a face of at least 120 square inches. The notices shall be posted in conspicuous places. The notice shall state that it is unlawful to stop, stand or park a vehicle within the area during the hours specified under subsection (b) of this section.

(e) Any person who violates subsection (a) of this section or who mutilates, destroys or removes any of the notices, signs, or posters described in subsection (d) of this section, shall be guilty of a misdemeanor for which the maximum term of imprisonment shall be 30 days.

(f) The owner of a vehicle parked in violation of subsection (a) of this section shall be deemed to have appointed any law enforcement officer of the city as such owner's agent for the purpose of arranging for the transportation and storage of such vehicle.

(Code 1964, § 12-127.1; Code 1982, § 20-110; Ord. No. 5593, § 1, 2-2-1981; Ord. No. 5709, § 1, 6-22-1981)

Sec. 66-190. Washing and repair of vehicles in city parking garages prohibited.

It shall be unlawful to wash any vehicle or to make any repairs, except emergency repairs, to any vehicle parked in the city parking garage.

(Code 1982, § 20-111; Ord. No. 6842, § 1, 12-2-1985)

Sec. 66-191. Handicapped parking.

(a) It shall be prohibited for any person to park or leave standing any vehicle in a space designated for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license plate, placard, or identification card or a disabled veteran registration plate as provided by state law.

(b) It shall be prohibited for any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate placard or identification card.

(c) It is prohibited for any person to park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons.

(Code 1982, § 20-112; Ord. No. 10410, § 2, 3-6-1995)

DIVISION 2. - TIMED PARKING LOTS

Sec. 66-219. Definitions.

For the purposes of this division, the following terms shall have the meanings respectively ascribed to them:

Holiday means the following days only: January 1st, the third Monday of January as Dr. Martin Luther King, Jr.'s birthday, Good Friday, Memorial Day, July 4th, the first Monday in September, the day designated and set aside by the President of the United States as the day of Thanksgiving, and December 25th.

Operator means any individual who shall operate a vehicle as the owner thereof or as the agent, employee or permittee of the owner, or who is in actual physical control of a vehicle.

Parking means the standing of a vehicle, whether occupied or not, upon a lot otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers or loading or unloading merchandise or in obedience to traffic regulations, signs or signals, or involuntary stopping of a vehicle by reason of causes beyond the control of the operator of the vehicle.

Street means any public street, avenue, road, or highway, located within the city and established for or used by vehicles.

Timed parking lot means a lot owned or leased by the city, designated as a timed parking lot, and established or used for parking of vehicles.

Timed parking space means any space within a timed parking lot and duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the lot.

Vehicle means any device in, upon, or by which any person or property is or may be transported upon a street, except a device which is operated upon rails or tracks.

(Code 1982, § 20-120; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-222. Designation of time for parking.

Unless the ordinance establishing a particular area as a timed parking lot provides otherwise, no vehicle may park in a timed parking space longer than two hours.

(Code 1982, § 20-124; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-223. Parking within timed parking spaces.

It shall be unlawful for any person to park a vehicle in such way that such vehicle shall not be entirely within the limits of the timed parking space. It shall be unlawful for any person to park any vehicle across any line or marking of a space.

(Code 1982, § 20-126; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-224. Overtime parking.

It shall be unlawful for any person to cause, allow, permit, or suffer any vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for any timed parking space.

(Code 1982, § 20-127; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-225. When overtime parking prohibited.

The provisions of section 66-224 shall not apply on Sundays, holidays, or between the hours of 6:00 p.m. and 7:00 a.m.

(Code 1982, § 20-123; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-227. Towing away and storage of vehicles parked in violation of division.

In each timed parking lot, the city manager shall cause signs to be erected that state that vehicles illegally parked will be towed. In all cases in which a vehicle is parked on any timed parking lot in violation of any of the provisions of this division except sections 66-229 and 66-230, such vehicle shall be towed away from that lot and stored as provided by sections 66-394 through 66-400.

(Code 1982, § 20-129; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-228. Parking of vehicles over 20 feet in length.

It shall be unlawful for any person to park a vehicle exceeding 20 feet in length in timed parking lots.

(Code 1982, § 20-130; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-229. Backing into parking space.

It shall be unlawful for any person to back a vehicle into any timed parking space in such manner that the rear rather than the front of such vehicle is placed adjacent to the inside of such parking space.

(Code 1982, § 20-131; Ord. No. 6840, § 1, 12-2-1985)

Sec. 66-230. Washing, etc., of vehicles prohibited.

It shall be unlawful to wash any vehicle or to make any repairs, except emergency repairs, to any vehicle parked on timed parking lots.

(Code 1982, § 20-132; Ord. No. 6840, § 1, 12-2-1985)

DIVISION 3. - CONTROLLED PARKING RESIDENTIAL AREA¹

Sec. 66-254. - Definitions.

For the purpose of this division the following words and phrases have the meanings indicated unless the context clearly indicates otherwise:

Block face means all the lots abutting one side of a street beginning where the street intersects with another street and continuing to the next street intersection. In the case of a loop or circular street, where the street has only one street intersection, the two edges of the street can be thought of as two concentric circles; the shorter, inside edge abuts one block face, and the longer, outside edge abuts the second block face. In the case of a cul-de-sac, block face means all the lots abutting the street.

Controlled parking residential area or *CPRA* means the on-street parking spaces designated as a CPRA, in which the spaces abut at least two or more residential block faces in which on-street parking of motor vehicles:

- (1) Is restricted pursuant to this division; or
- (2) Pursuant to a section of this Code outside this division, is subject to time limits or is prohibited.

Permit is a license that exempts a motor vehicle on which the permit is displayed in accordance with this division from the two-hour restriction on parking imposed by section 66-260.

Residential means residential in character or use.

Residential area means a portion of the city that is primarily residential.

Residential block face means a continuous portion of a block face, which continuous portion is primarily residential.

(Ord. No. 14811, § 1, 6-15-2015)

Sec. 66-260. - Violations and penalties. Modified

Except to the extent otherwise provided in section 66-258, no person shall park a motor vehicle in a CPRA for longer than two hours without a properly displayed permit or obtain or use a permit in a manner contrary to this division. Any person found in violation of this division shall be assessed a civil penalty as provided in section 66-370(c) and, to the extent applicable, section 1-9(b).

(Ord. No. 14811, § 1, 6-15-2015)

DIVISION 5. - BUS STOPS AND TAXICAB STANDS

Sec. 66-284. Where buses and taxicabs may stop in any business district.

The driver of a bus or taxicab shall not stand or park upon any street in any business district at any place other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping, in accordance with other stopping or parking regulations, at any place for the purpose of and while actually engaged in the loading or unloading of passengers.

(Code 1964, § 12-201; Code 1982, § 20-160)

Sec. 66-285. Parking in bus stops and taxicab stands.

No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein, for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter or already within such zone.

(Code 1964, § 12-202; Code 1982, § 20-161)

ARTICLE V. - BICYCLES AND NON-MOTORIZED RECREATION VEHICLES

DIVISION 2. – BICYCLES

Sec. 66-307. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bicycle means a non-motorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.

Bike lanes means that section of the roadway set aside for the use of bicycles and designated with either signage or roadway painting or both.

Shared-use trail means a paved pathway for bicycles and pedestrians either paralleling a roadway and located within the right-of-way of said roadway, or located within a public easement or right-of-way other than that of a roadway, and designated by signage as a public trail.

(Code 1982; Ord. No. 13238, § 20-170, 4-3-2006)

State law references: Definition of bicycle, G.S. 20-171.1; bicycle racing prohibited, G.S. 20-171.2.

Sec. 66-308. Applicability.

For the purposes of this Code, bicycles shall be deemed vehicles; and every rider of a bicycle upon a highway shall be subject to the provisions of this Code and of North Carolina General Statutes applicable to the driver of a vehicle except those which by their nature can have no application.

(Code 1982; Ord. No. 13238, § 20-171, 4-3-2006)

Sec. 66-309. Safety requirements.

(a) Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 200 feet to the rear of such bicycle, when used at night.

(b) Anyone riding upon a bicycle shall not attach the bicycle or himself or herself to any moving vehicle upon any roadway.

(c) Any person riding a bicycle upon a public right-of-way shall not carry any other person older than four years old or weighing more than 40 pounds upon the handlebar, frame, or any other portion of the bicycle, nor shall any person so ride upon any such vehicle. A passenger shall only be allowed on a bicycle if he or she is four years old or younger or weighs less than 40 pounds; that passenger must be either riding in a seat which shall adequately retain the passenger in place and protect the passenger from the bicycle's moving parts, or riding in an enclosed trailer or other device which meets or exceeds current nationally accepted standards of design and manufacture for protection of the passenger from impacts in a crash.

(d) When using shared-use trails, bicyclists shall yield the right-of-way to pedestrians.

(Code 1982; Ord. No. 13238, § 20-172, 4-3-2006)

Sec. 66-310. Traffic regulations.

(a) Any person operating a bicycle on a public right-of-way shall obey the instructions of official traffic signals, signs, and other control devices applicable to the driver of a motorized vehicle, except those which by their nature can have no application to a bicycle.

(b) Right-of-way at intersections shall be determined by North Carolina General Statutes whenever applicable. Bicycles using bike lanes shall have the right-of-way over vehicles making turning movements from parallel lanes of a roadway.

(c) Bicycles may be walked subject to all provisions of law applicable to pedestrians.

(d) The operator of a bicycle emerging from an alley, driveway, or building shall, upon approaching a sidewalk, yield right-of-way to all pedestrians in close proximity on such sidewalk, and upon entering a roadway shall yield right-of-way to all approaching motorized vehicles whose movement would be affected thereby.

(e) Whenever a lane of traffic on any roadway is indicated by pavement making or by a sign as being assigned solely as a bicycle lane, it shall be unlawful for the driver of a motorized vehicle to occupy such lane for moving or parking, except that a driver may cross such lane to make a lawful turning movement, yielding the right-of-way to bicyclists occupying such lane.

(Code 1982; Ord. No. 13238, § 20-173, 4-3-2006)

DIVISION 3. - NON-MOTORIZED RECREATION VEHICLES

Sec. 66-312. Motorized vehicles and shared-use trails.

(a) No person shall drive any motorized vehicle upon any shared-use trail except at public street intersections or to enter a driveway. No person shall drive across a shared-use trail as permitted by this section except after yielding right-of-way to all bicycles and pedestrians on the trail.

(b) This section shall not apply to law enforcement officers or city maintenance staff while in discharge of their official duties.

(Code 1982; Ord. No. 13238, § 20-175, 4-3-2006)

Sec. 66-313. Enforcement.

If any person shall violate an ordinance of the city regulating the operation of a bicycle, he or she shall be responsible for an infraction and shall be required to pay a penalty of no more than \$50.00.

(Code 1982; Ord. No. 13238, § 20-176, 4-3-2006)

Sec. 66-320. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Inherent risk means those dangers or conditions that are characteristic of or intrinsic to or an integral part of skateboarding and freestyle bicycling.

Non-motorized recreation vehicle means a vehicle used in certain hazardous recreational activities, i.e., skateboarding or freestyle bicycling.

Skateboard or freestyle bicycling park means a facility that is designed and maintained by the city for the purpose of either recreational skateboard use and/or recreational freestyle bicycle use.

(Code 1982; Ord. No. 13238, § 20-177, 4-3-2006)

Sec. 66-321. Clinging to moving vehicles.

Any person riding upon any skateboard or any non-motorized recreation vehicle shall not attach the same or himself or herself to any moving vehicle upon any roadway.

(Code 1982; Ord. No. 13238, § 20-178, 4-3-2006)

Sec. 66-322. Use of skateboards.

No person upon a skateboard or similar device shall go upon any roadway, except while crossing the street on a crosswalk and except upon streets set aside as play streets when and as authorized by the provisions of this Code or other ordinances of the city.

(Code 1982; Ord. No. 13238, § 20-179, 4-3-2006)

Sec. 66-325. Enforcement.

If any person shall violate an ordinance of the city regulating the use of a non-motorized recreation vehicle, he or she shall be responsible for an infraction and shall be required to pay a penalty of no more than \$50.00.

(Code 1982; Ord. No. 13238, § 20-182, 4-3-2006)

ARTICLE VI. – ENFORCEMENT

DIVISION 2. - ENFORCEMENT AND COLLECTION OF CIVIL PENALTIES FOR PARKING REGULATIONS

Sec. 66-370. Civil penalties for parking violations; appeals process.

(a) *Twenty dollar civil penalty.* Violation of the following sections of this Code, and violation of any parking ordinance for which no civil penalty is provided in this section, shall subject the offender to a civil penalty of \$20.00 if such penalty is paid within 30 days of the violation, and a civil penalty of \$40.00 plus costs of court, if any, if the \$20.00 civil penalty is not paid within 30 days after the violation. The offender shall be subject to an additional civil penalty of \$25.00 plus costs of court if any previous incurred civil penalty has not been paid within 45 days after the violation.

- (1) Section 66-171—Prohibited in certain categories of places.
- (2) Section 66-172—Moving vehicle into area where parking is prohibited or away from curb.
- (3) Section 66-173—Parking in front of religious facilities.
- (4) Section 66-174—Parking in front of theaters.
- (5) Section 66-175—Width of roadway to be left available.
- (6) Section 66-176—Manner of parking generally.
- (7) Section 66-177—Angle parking generally.
- (8) Section 66-178—Manner of parking trucks.
- (9) Section 66-179—Backing vehicle into an angle parking space.
- (10) Section 66-180—Parking for purpose of sale of vehicle.
- (11) Section 66-181—Parking for purpose of repair, etc., of vehicle.
- (12) Section 66-183—Parking on streets in fire district after snowfall.
- (13) Section 66-185—Limitation on parking time in particular city block.
- (14) Section 66-187—Parking of motor vehicles more than 6½ feet in width on streets between 6:00 p.m. and 7:00 a.m.
- (15) Section 66-189—Parking in specific public vehicular areas.
- (16) Section 66-222—Designation of time for parking.
- (17) Section 66-221—Parking with timed parking spaces.
- (18) Section 66-224—Overtime parking.
- (19) Section 66-228—Parking of vehicles over 20 feet in length.
- (20) Section 66-229—Backing into parking spaces.
- (21) Section 66-230—Washing, etc., of vehicles prohibited.
- (22) Section 66-284—Where buses and taxicabs may stop in any business district.
- (23) Section 66-285—Parking in bus stops and taxicab stands.
- (24) Section 66-345—Traffic control and regulation schedule to the extent of any such ordinance regulates or prohibits parking of vehicles.
- (25) Section 14-15—Parking.
- (26) Section 26-78—Parking areas.
- (27) Section 32-2—Manner of parking vehicles from which merchandise is sold.
- (28) Loading and unloading zones. and traffic control and regulation ordinances creating loading zones.

(b) *Reserved.*

(c) *Fifty dollar civil penalties.* Violation of the following sections of this Code shall subject the offender to a civil penalty of \$50.00 if such penalty is paid within 30 days of the violation, and a civil penalty of \$75.00 plus costs of court, if any, if the \$50.00 civil penalty is not paid within 30 days after the violation. The offender shall be subject to an additional civil penalty of \$25.00 plus costs of court if any previous incurred civil penalty has not been paid within 45 days after the violation.

- (1) Any provision in chapter 46 regulating or prohibiting parking of vehicles.
- (2) Article IV, division 3.

(d) *One hundred dollar civil penalty.* Violation of the following sections of this Code shall subject the offender to a civil penalty of \$100.00 plus costs, if any. The offender shall be subject to an additional civil penalty of \$25.00 plus costs of court if any previous incurred civil penalty has not been paid within 45 days after the violation.

(1) Section 66-191.

(e) *Appeals.* A person owning or operating a vehicle on which a law enforcement officer, or other person authorized by the city manager to enforce parking ordinances, has placed a notification of a parking violation as described in section 66-372, may appeal the issuance of that notification. Appeals must be made in writing and filed with the city manager within 30 days of issuance of notification. Appeals that are received on or before the 30th day after issuance of the notification shall be considered to have been timely filed. The person designated by the city manager shall review evidence submitted by the appellant and issue a determination. A civil penalty for failure to pay within 30 days of issuance as provided elsewhere in this section shall not be assessed until 30 days after the person designated by the city manager has issued his or her determination of the appeal.

(Code 1964, § 12-38; Code 1982, § 20-200; Ord. No. 7001, § 2, 6-26-1986; Ord. No. 9360, 7-22-1991; Ord. No. 9579, §§ 1—3, 10-1-1992; Ord. No. 10410, §§ 6, 7, 3-6-1995; Ord. No. 10961, § 1, 11-4-1996; Ord. No. 11395, § 1, 3-16-1998; Ord. No. 11785, §§ 1, 2, 4—6, 7-19-1999; Ord. No. 14748, § 1, 5-18-2015)

Sec. 66-394. Authority to remove; causes.

(a) In addition to the removal and disposition of abandoned or junked motor vehicles from the public streets and ways, as provided in sections 26-147--26-152, any member of the police department may move or cause to be removed any motor vehicle from a street or any other public place owned or controlled by the city, to a garage or other facility designated by the police, under any of the following circumstances:

(1) When any vehicle is left unattended upon any street, public alley, bridge or underpass, where such vehicle constitutes an obstruction to traffic, impedes the cleaning or working of or on such street or public way or interferes with or obstructs authorized street parades and processions.

(2) When a vehicle upon a street or other public way is so disabled as to constitute an obstruction to traffic.

(3) When the person in charge of a vehicle upon a public street or public way is under arrest, being detained, has been removed from such vehicle by officers of the law or, by reason of physical injury or other cause, is incapacitated to such an extent as to be unable properly and safely to operate the same or properly to drive or arrange for its custody or removal.

(4) When any vehicle is left unattended upon a public street, public alley or other public way and is so parked as to constitute a hazard or an obstruction to the normal movement of traffic, or is parked unattended upon any street in front of a private driveway, within 15 feet in either direction of a fire hydrant, opposite the entrance to a fire station, within any area or zone designated as a bus zone or bus stop, in any area in which parking of vehicles is prohibited or in any area in excess of the authorized period of time for parking at such point.

(5) When towing is permitted pursuant to section 66-227.

(b) Any law enforcement officer of the city may move or cause to be removed from any public vehicular area any vehicle stopped, standing or parked in violation of section 66-189. The vehicle may be moved to a garage or other facility designated by the city manager.

(Code 1964, § 12-210(d), (e); Code 1982, § 20-210; Ord. No. 5593, § 2, 2-2-1981; Ord. No. 6840, § 3, 12-2-1985)

ARTICLE VII. - TEMPORARY CLOSING OR BLOCKING OF STREETS

Sec. 66-429. - Definitions.

These definitions apply in this article, unless the context requires otherwise:

First Amendment protected activity is a parade, demonstration, or other activity protected by the First Amendment to the U.S. Constitution through the application of the 14th Amendment to the U.S. Constitution.

Order means a permit issued pursuant to section 66-430.

Permit means a permit issued pursuant to section 66-430.

Street means a street as defined by section 1-2, excluding those accepted for maintenance by the state. Unless the context requires otherwise, "street" includes a portion of the street.

To close a street or sidewalk means to temporarily prohibit the public from driving motor vehicles on a street or to temporarily prohibit or limit the public's use of a sidewalk.

(Code 1964, § 19-75; Code 1982, § 20-220; Ord. No. 5302, § 1, 11-19-1979; Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-430. - Purposes for which orders and permits authorized.

The city manager is authorized to issue orders closing streets and sidewalks and to issue permits for the use of such streets.

(Code 1964, § 19-76; Code 1982, § 20-221; Ord. No. 5302, § 1, 11-19-1979; Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-431. - Permit application; conditions of issuance; appeals.

(a) The city manager shall not order a street closed or issue a permit for the use of such street pursuant to section 66-430 except upon written application. The city manager may issue such order and such permit if the city manager finds:

- (1) The proposed street closing and the proposed use of the closed street will not unreasonably interfere with the normal activities of surrounding residents, businesses, or institutions.
- (2) The street proposed to be closed will reasonably and safely accommodate the expected number of persons.
- (3) Neither the proposed use nor the anticipated sound or noise level arising from such use will have an unreasonably adverse effect upon surrounding residents, businesses, or institutions.
- (4) The pedestrian and motor vehicle traffic generated by the proposed use can be reasonably and safely accommodated on the streets and walkways of the area surrounding the street proposed to be closed.
- (5) Adequate security and crowd control can be provided by responsible public agencies.
- (6) Adequate fire control and fire prevention service can be provided by responsible public agencies.
- (7) The proposed street closing and the proposed use of the closed street are not likely to cause an unreasonable danger to the public health or safety.
- (8) The proposed street closing and the proposed use of the closed street are not likely to unreasonably interfere with public transportation and emergency services.
- (9) The applicant has obtained such liability insurance coverage as may be required for the proposed events by a schedule of insurance prepared by the city manager.
- (10) Notice of the proposed street closing has been given in accordance with the instructions given by the city manager.

- (11) In order to take into account timing of issuance of required regulatory permits and for the applicant to arrange for required city services, the street closing order may be issued with conditions related to such permits.
- (b) (1) With the advice of the city attorney, the city manager shall establish rules setting reasonable periods of time to respond to applications. Rules, including revisions, established under this subsection shall include a statement that the city attorney was consulted in writing the rules. When the city manager neither explicitly denies nor grants an application within 30 days after receiving it, the city manager shall be deemed to have denied the application on all grounds on the 30th day. The city manager's time periods shall include a provision requiring an expedited review and decision either (a) when the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, or (b) when an applicant shows compelling reasons for a shortened review period. When the city manager neither explicitly denies nor grants an application within such expedited review period, the city manager shall be deemed to have denied the application on all grounds on the last day of the review period.
- (2) *Interim rules for the expedited review and decision period.* Until the city manager establishes rules that provide otherwise this subsection (2) applies. When the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, or when an applicant shows compelling reasons for a shortened review period, the application shall be submitted to the city at least 48 hours, excluding weekends and holidays, before the proposed event. When the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, and the city manager is confident that adequate preparations can be made — acting reasonably, without extraordinary actions, and without endangering public safety and property — in less than 48 hours, excluding weekends and holidays, before the proposed event, the city manager will shorten that 48-hour period accordingly. When the city manager neither explicitly denies nor grants an application within a time period provided for it by this subsection (2), the city manager shall be deemed to have denied the application on all grounds at the end of that time period.
- (c) Except in the instance of a denial deemed to occur pursuant to subsection (b), the city manager shall specify the grounds for denial from the following:
- (1) The application is not complete;
 - (2) The applicant has not tendered the required indemnification agreements, insurance certificates, and security deposits within times prescribed;
 - (3) The application contains a material falsehood, misstatement of fact, or misrepresentation;
 - (4) The applicant is legally incompetent to contract or to be sued;
 - (5) The applicant has on prior occasions made a material misrepresentation in any transaction with the city to the extent that a reasonable person would have reason to question the truth of statements made in or in connection with the application for a street closing or a special event;
 - (6) The applicant has previously violated or allowed a violation of a street closing or special event permit to the extent that a reasonable person would have reason to question whether the applicant will comply with the requested permit;
 - (7) The proposed use would conflict with a use that the city has already planned or approved;
 - (8) The proposed event would present an unreasonable danger to the public health or safety;
 - (9) The proposed event is likely to substantially or unnecessarily interfere with traffic;
 - (10) A reasonable alternative location, time, or date is available that would substantially better accommodate the needs and uses of the general public than the proposed location, time, or date (alternative location and time includes closing none or a smaller portion of a street and a shorter time period);
 - (12) The event is likely to interfere with the movement of emergency equipment and personnel and police protection;

(13) There is a substantial risk that insufficient law enforcement and traffic control officers would be available to adequately protect participants and non-participants from traffic-related hazards in light of the other demands for police protection;

(14) The use or activity intended by the applicant is prohibited by law;

(15) For all activities that are not First Amendment protected activities, the city manager shall consider these additional criteria. More positive findings on these additional criteria can allow for a street closing, or a larger street closing, while more negative findings will tend to support no street closing, a different day or time, or a smaller street closing.

i. The cultural and educational significance of the event;

ii. The extent to which the event contributes to the economic revitalization and business development of the city;

iii. The effect on, and cost of the event to, city support services;

iv. The effect of the event on the public health, safety and welfare;

v. The effect of the event on business and resident populations near the proposed event site;

vi. The evaluation of any previous event produced by the event organizer with regard to planning, quality, and public safety;

vii. The frequency and timing of the event or similar events.

(Code 1964, § 19-77; Code 1982, § 20-222; Ord. No. 5302, § 1, 11-19-1979; Ord. No. 14355, § 10, 11-5-2012; Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-432. - Terms of orders and permits.

To promote the public health, safety, and welfare, the city manager may impose terms and conditions in a permit that, without limitation, address access to driveways; contain requirements regarding insurance, indemnification, sound and noise limitations, and security; require the applicant to arrange for additional services from the city; and require adherence to laws and other requirements of governmental persons.

(Code 1964, § 19-78; Code 1982, § 20-223; Ord. No. 5302, § 1, 11-19-1979; Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-433. - Interference.

When a public assembly or parade is held on a closed street pursuant to a permit, it is unlawful to unreasonably hamper, obstruct, impede, or interfere with the public assembly or parade, or with any person, vehicle, or animal participating or used in the public assembly or parade.

(Ord. No. 14355, § 11, 11-5-2012; Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-434. - Reservation of rights in city; other ordinances and N.C. DOT not limited.

(a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. The city reserves the right to rescind in whole or in part any order and to require any activity allowed by this article or by a permit to cease in whole or in part. The city may exercise the authority listed in this subsection for any purpose, including:

(1) To allow for construction, maintenance, or repair of any public street, sidewalk, utility, building, or facility;

(2) To allow for use of a public street, sidewalk, utility, building, or facility in connection with parades, festivals, or other events;

(3) To remedy a nuisance; or

(4) To protect or promote the public health, safety, or welfare.

(b) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or welfare, the city manager may, orally or in writing, direct any person allowed to do any activity by this

article or by a permit to immediately move such distance as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such direction, the individual shall comply. When such a direction is not complied with, the city manager may cause objects in violation of the direction to be removed, disposed of, or both, and the cost of such actions shall be borne by the offender. This subsection shall not be construed to limit subsection (a).

(c) The police may authorize any person to drive a vehicle on the closed street in order to exit the area, if the vehicle is parked in a location from which the only reasonable exit is over the closed street. The police may authorize a vehicle to enter the closed street in order to park in a space designated with a sign pursuant to G.S. 20-37.6(d) for handicapped persons.

(d) Nothing in this division shall be construed to limit any other ordinance, including section 66-108 (driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-109 (driving on sidewalk), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of the N.C. Department of Transportation over rights-of-way under its jurisdiction.

(e) The principle that the expression of one thing is the exclusion of another is not to be used to construe this division to grant to the public any right to use property owned or controlled by the city. (Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-435. - Revocation of permit; review of decisions.

(a) *Revocation; grounds and procedure for revocation.* The city manager may, at any time, including while the street is closed and the permittee's activities on the closed street are taking place, revoke any permit issued under this article and any order closing a street or sidewalk issued in relation to or in connection with a permit if the city manager finds:

- (1) Fraud, misrepresentation, or a knowingly false statement with respect to a material fact in the permit application;
- (2) The permittee or the permittee's agent or employee violated this article or the terms of the permit;
- (3) The permittee or the permittee's agent or employee conducted an activity for which a permit is required in such a manner as to create a public nuisance, cause a breach of the peace, violate any applicable law, or interfere with the rights of abutting property owners;
- (4) Conditions, such as a public emergency, exist which, had they existed or been known at the time the permit was issued would have resulted in denial of the permit;
- (5) There is a substantial likelihood that the proposed use of the street or sidewalk or the closing of the street or sidewalk will be detrimental to public health or safety;
- (6) There is a substantial likelihood that conditions on the street or sidewalk designated to be closed will occur which would result in substantial risk of harm to persons or property; or
- (7) There is a substantial likelihood that activities proposed to take place on or in connection with the street or sidewalk designated to be closed will occur which would result in substantial risk of harm to persons or property.

Except in case of emergency or impracticality, before revoking the permit, the city manager shall give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked pursuant to this section even if the person making the findings pursuant to this section had made a contrary finding before the permit was issued, regardless of whether the facts upon which the finding is made had changed.

(b) *Notice.*

- (1) The city manager shall cause a written notice of the revocation to be served on the permittee by first-class mail, email or other electronic means, or fax, to the address or number shown on the permit application, or by any method allowed by law for service of a summons in a civil action.

The person serving the notice may be any person who is 18 years or older, including the city manager.

(2) If the city manager finds that time before a proposed hearing is insufficient to allow service in accordance with subsection (1), the city manager may, as an alternative to the means listed in subsection (1), notify the permittee by telephone of the grounds for revocation and of the right to appeal, provided a written notice is also sent in accordance with subsection (1) on or before the next day that is not a holiday.

(3) The notice described in subsection (1) shall set forth a brief statement of the grounds for revocation and of the right to appeal.

(4) The city manager shall see that a written record is made to show compliance with this subsection (b).

(c) *Retention of fees; waiting period.* If the city revokes a permit, the city shall retain the fee, if any, paid for the permit. The person whose permit is revoked for grounds stated in subsection (a)(1), (a)(2), or (a)(3), regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or 30 days after the date of the revocation, whichever time period is longer. The city manager shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is the wife and the next year it is the husband, may be disregarded.

(d) *Review of decisions.*

(1) If the city manager denies the issuance of a permit, revokes a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the city manager within ten days of the date of the notice of decision. The city manager or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The city manager shall expedite the review process when the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity or the person seeking review shows compelling reasons for a shortened review period. The failure of the hearing officer to set a hearing within 15 days of the filing of the written request for review, or to deliver a decision within ten days after the hearing, or within any shortened periods set by the city manager, shall be deemed a denial of the relief sought and affirmance of the action for which review was sought. The permittee and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the city manager determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2) or (a)(3) will occur, re-occur, or continue during the review process.

(2) *Interim rules for the expedited review and decision period.* Until the city manager establishes rules that provide otherwise, when an application is subject to the expedited review and decision period pursuant to section 66-431(b) or a rule established pursuant thereto, the hearing shall be held within two days, excluding weekends and holidays, after the written request for review is filed in the office of the city manager. When the city manager does not issue a decision on a

review subject to that time period within two days after the date of the hearing, the city manager is deemed to have affirmed the decision on that second day.

(e) *Certiorari.*

(1) A decision by the hearing officer is subject to review by the Durham County Superior Court by proceedings in the nature of certiorari. The petition for review shall be filed with the clerk of Superior Court within the earlier of 30 days after the denial and affirmance are deemed to occur pursuant to subsection (d), or within 30 days after the decision is delivered to the applicant. Delivery is made by hand-delivery of the decision to the applicant, or by first-class or certified mail to the address provided on the application. Delivery by mail is complete when placed in the custody of the U.S. Postal Service.

(2) *Interim rules for the expedited review and decision period.* Until the city manager establishes rules that provide otherwise, when an application is subject to the expedited review and decision period pursuant to section 66-431(b) or a rule established pursuant thereto, the city shall file a copy of the record within five days, excluding weekends and holidays, unless the writ specifies otherwise.

(Ord. No. 14845, § 4, 10-19-2015)

Sec. 66-436. - Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the city manager may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The city manager may compromise such claims, before or after commencement of the civil action, if the city manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that

the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the city manager may abandon a claim.

(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of motor vehicles, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.

(e) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying subsection 1-9(e), the city council intends that revocation of a permit be deemed to be a remedy.

(Ord. No. 14845, § 4, 10-19-2015)