

**ORDINANCE TO MODIFY RESTRICTIONS ON SALES AND SOLICITATIONS
IN THE STREET RIGHT-OF-WAY**

City Code sections 54-25 through 54-86 with proposed changes incorporated

Sec. 54-25. Purpose.

This article is adopted to promote the health, safety, and welfare of the citizens, to decrease potentially dangerous distractions to drivers and obstructions on sidewalks and other public facilities, to reduce the likelihood of motor vehicle-pedestrian collisions and collisions between motor vehicles, and to promote business activity.

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.

Durham Civic Center Plaza means the area bounded by the Durham Civic Center on the south, the Carolina Theater Building on the west, Morgan Street on the north, and Foster Street on the east.

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.

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, for the purpose of soliciting employment, business, or contributions, when (i) the vehicle is in one of the two traffic lanes closest to the edge of the roadway if the roadway contains more than one traffic lane, (ii) the vehicle is approaching a traffic signal or sign that requires the vehicle to come to a complete stop, and (iii) the individual is on a paved sidewalk. The individual does not violate subpart (ii) 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 subpart (ii) 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 when (i) the vehicle is in one of the two traffic lanes closest to the edge of the roadway if the roadway contains more than one traffic lane; (ii) 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 (iii) 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 when (i) the vehicle is in one of the two traffic lanes closest to the edge of the roadway if the roadway contains more than one traffic lane; (ii) 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 (iii) the individual is on the side of the vehicle that is closest to the edge of the roadway.

(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 (2) does not prohibit an individual from standing and walking on the roadway during the time needed (i) to travel to or from a motor vehicle whose occupant has signaled the individual to approach, and (ii) 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 N.C. 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 (A), an individual with a disability may be accompanied by a dog when (i) 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 (ii) 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 (B).

- (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 (i) that is reasonably clean and in good repair, and (ii) 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 used 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 N.C. 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.

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

Sec. 54-85. Reserved.

Sec. 54-86. Reserved.

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.