

## 8.1 – City Ordinance – Streets, Sidewalks & Other Public Places

### Chapter 66 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES<sup>11</sup>

Footnotes:

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**Cross reference**— Ordinances relating to opening, relocating, closing, etc., streets, § 1-10(5); buildings and building regulations, ch. 10; traffic and vehicles, ch. 70; utilities, ch. 74; street and park trees, § 78-26 et seq.; land use, app. A; streets and sidewalks, app. A, art. XIV; signs, app. A, art. XVII.

**State Law reference**— General authority over streets and sidewalks, G.S. 160A-296.

#### ARTICLE I. - IN GENERAL

Sec. 66-1. - Requirements for city acceptance of certain streets not subject to subdivision control.

No streets constructed in connection with apartment projects or similar land uses which do not constitute subdivisions, and therefore need not comply with the terms of the land use ordinance, shall be accepted for maintenance by the city unless and until the streets are dedicated to public use, and all requirements of appendix A to this Code, land use, relative to the installation of water and sewer mains, laterals, storm drainage, curb and gutter, and paving, in compliance with the city specifications, are met.

(Code 1971, § 18-1)

**State Law reference**— Responsibility of cities for maintaining streets accepted by the city and not part of the state highway system, G.S. 136-66.1(2).

Sec. 66-2. - Naming streets generally.

The board of aldermen shall have the power to designate the names of all streets in the city.

(Code 1971, § 18-2)

**State Law reference**— Requirement to develop a comprehensive plan for a coordinated street system, G.S. 136-66.2.

Sec. 66-3. - Permit required for excavations.

It shall be unlawful for any person to dig any hole, ditch or excavation of any kind whatsoever on any street in the city without first securing a permit therefor in writing from the city manager or his designee.

(Code 1971, § 18-3)

Sec. 66-4. - Repair of excavations.

It shall be the duty of each person who shall open or dig a ditch, trench or hole in any street, public alley or sidewalk of the city, to put the street, public alley or sidewalk in as good condition in all respects as it was before.

(Code 1971, § 18-4)

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### Sec. 66-5. - Protection of excavations.

It shall be unlawful for any person making any excavation for any purpose whatsoever in any of the streets or sidewalks to fail to securely cover the excavation with planks or to place ropes around the excavation three feet from the ground, or to fail to place a sufficient number of red lights around the excavation before dark and to keep the lights burning all night each night the excavation shall be open.

(Code 1971, § 18-5)

### Sec. 66-6. - Streets or sidewalk construction permits.

- (a) It shall be unlawful for any person to construct a sidewalk of any description, of any material, within the right-of-way of any public street in the city without a written permit therefor from the city manager, which such permit shall not be issued until the proposed construction shall have been approved by the city engineer, and he shall have advised the city manager of his approval in writing.
- (b) It shall be unlawful for any person to place any paving material within the right-of-way of any public street in the city without a written permit therefor from the city manager, which such permit shall not be issued until the proposed construction shall have been approved by the city engineer, and he shall have advised the city manager of his approval in writing.
- (c) Nothing contained in this section shall apply to street improvements installed by the city or the state.

(Code 1971, § 18-6)

### Sec. 66-7. - Damaging pavements.

It shall be unlawful for any person to drag, or run, or cause to be dragged or run any harrow or other implement, engine, machine or tool upon any asphalt, bithulithic, warrenite, or other permanently paved street of the city which shall be liable, in any way injure or cut the surface thereof; it shall also be unlawful to injure any dirt street in the same manner.

(Code 1971, § 18-7)

### Sec. 66-8. - Permit and bond required to move buildings.

- (a) No person shall move any house or building upon or across public streets or sidewalks without the written consent of the city manager. The process of procuring such consent shall be begun by an applicant filing an application in manner and form satisfactory to the city manager, with which the applicant shall pay a fee to the city in the sum of \$25.00 if the structure proposed to be moved does not exceed 18 feet in height after it has been loaded onto the carriage which will move it, or a fee in the sum of \$50.00 if the structure proposed to be moved exceeds 18 feet in height after being loaded onto the carriage which will move it.
- (b) Before issuing the permit required by subsection (a) of this section the city manager shall:
  - (1) Require the applicant to deposit with the city manager certificates of insurance in manner and form satisfactory to the city attorney, reflecting that the applicant has in force, motor vehicle liability insurance with policy limits of no less than \$100,000.00/\$300,000.00, on the vehicles which will be used in the move, and a general liability insurance policy with policy limits of no less than \$100,000.00/\$300,000.00, covering any incident which might occur during the move, by which persons might be injured or property damaged, which would not be covered by the motor vehicle liability insurance.

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- (2) Cause the heads of the several city departments whose men and equipment will be involved in the move to prepare detailed estimates of actual costs expected to be incurred in assisting with the move.
- (3) Require the owner of the building to be moved to execute a written instrument by which he agrees to pay the actual expenses incurred by the city in connection with the moving of the building, and in connection therewith, to deposit with the city clerk, cash, cashier's check or bank money order, in the amount of the estimated city expenses, determined as above provided, subject to refund should such estimate be in excess of actual expenses.

(Code 1971, § 18-8)

**Cross reference**— Businesses, ch. 14.

**State Law reference**— Professional housemoving, G.S. 20-356 et seq.

Sec. 66-9. - Damage to bridges or culverts.

- (a) No person shall injure or misplace any part of any bridge, culvert, ditch and drain or other property belonging to or used by the city or place any obstruction in any culvert, ditch or drain, to prevent the free flow of water on or over the streets of the city.
- (b) It shall be unlawful for any person to place or cause to be placed any material or object into or upon any drainage facility, including but not limited to catchbasins, culverts, storm sewers, ditches, canals, pipe outfalls or natural streams, which would restrict, prevent, or impede the flow of surface water in any manner through such facilities.

(Code 1971, § 18-9)

Sec. 66-10. - Damaging signs and utilities facilities.

No person, except employees of the city in the performance of their official duties, shall injure, tamper with, remove or paint upon or deface any sign, signpost, street light, traffic signal or bulletin board or other city property upon the streets and sidewalks.

(Code 1971, § 18-10)

Sec. 66-11. - Projecting signs, awnings, etc.

- (a) No person shall erect over any sidewalk or street any wooden shed or awning or any wooden shed for the support of an awning or erect upon any street or sidewalk any post for the support of any awning; however, this section shall not be construed to prevent the erection over the sidewalk of cloth awnings supporting upon metallic frames firmly suspended from the building, at least seven feet above the level of the sidewalk.
- (b) No sign, marquee, awning or structure of any sort shall be erected on or permitted to remain within the existing right-of-way of Broad Street unless the bottom of the sign or awning shall be a minimum of ten feet above the sidewalk, and shall leave a horizontal clearance of 1.5 feet from the line of the curb.
- (c) It shall be unlawful except with the express approval of the board of aldermen for any person to construct or maintain any awning, canopy, marquee, sign or other structure with its supports on the street right-of-way.

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- (d) Canopies or other sidewalk coverings whose supports are to be placed on the public right-of-way may be permitted under the following rules:
- (1) Plans for such coverings shall be submitted to the board of aldermen and may be approved providing the following standards are met, if in the opinion of the board of aldermen the interest of the public would be served thereby.
    - a. All canopies or other sidewalk coverings shall be constructed of concrete or metal in such manner as to be substantially permanent in nature and capable of supporting a live load of 30 pounds per square foot on the horizontal projection.
    - b. The minimum underside clearance including signs or other appurtenance below the structure shall be nine feet, six inches above the sidewalk.
    - c. The centerline of the columns shall be no less than two feet back of the existing street curb. No columns shall be more than two feet in diameter.
    - d. No part of the canopy project closer than 18 inches to a street parking or traffic lane.
    - e. All canopies must be equipped with underside lighting, provided and maintained by the abutting properties at a level of ten footcandles at the sidewalk.
    - f. The only advertising sign permitted on the underside of the canopy will be a small identification sign for each adjacent entrance. Such signs to be a standard height of six inches and of such length as to adequately provide identification.
    - g. All canopies shall extend along the entire street frontage of a lot.
  - (2) Permission for the use of the street right-of-way for any use permitted herein shall be subject to revocation by the board of aldermen at will.
  - (3) Any person permitted to install a street covering whose supports are placed on the public right-of-way shall adjust such structure or remove same if it should become necessary by reason of a change in the width of the driving surface of the street in which the supports are placed or by reason of other street improvements.

(Code 1971, § 18-11)

Sec. 66-12. - Fees.

Fees and charges for driveway permits, repairs or improvements to the city's public infrastructure, signs, and any equipment or apparatus usage shall be established from time to time by the board of aldermen and set forth and maintained in the city schedule of fees and charges.

(Ord. No. 2011-106, § 1, 5-24-11)

Secs. 66-13—66-35. - Reserved.

ARTICLE II. - DRIVEWAY CONSTRUCTION<sup>[2]</sup>

Footnotes:

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**Cross reference**— Required widths of driveways, app. A, § 15-345.

**State Law reference**— Authority to regulate driveway connections, G.S. 160A-307.

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### Sec. 66-36. - When required.

If access is being provided vehicles from a public street to adjoining property by means of a driveway that must cross a curb, a public sidewalk, or a drainage pipe to be laid in a roadside ditch, the driveway must be installed in accordance with the provisions of this article.

(Code 1971, § 18-22)

### Sec. 66-37. - Permit required.

It shall be unlawful for any person to construct a driveway across any public sidewalk, walkway or parkway or into any street or cut any curb for such purpose without first having obtained a permit therefor pursuant to this article.

(Code 1971, § 18-23)

### Sec. 66-38. - Application for permit; issuance.

Application for a permit required by this article shall be made to the public works department on a form which shall be completed by the applicant as specified thereon and shall provide, among other things, a sketch which clearly shows the design of the driveway and the dimensions thereof, unless it is to be constructed in compliance with the North Carolina Division of Highways Standard Number 848.02 for radius-type turnout driveway cuts, or their Standard Number 848.03 for drop curb-type driveway cuts, whichever is most applicable to the location in question. Provided, however, all such installations shall be constructed so as neither to retain nor impede the flow of water in the gutter line of such driveway and street and so as to comply with handicap requirements when applicable. If the proposed driveway complies with the provisions of this article, the director of public works, or his designee, shall issue a permit therefor.

(Code 1971, § 18-24)

### Sec. 66-39. - Design standards.

#### (a) *Driveways for business or commercial installation:*

- (1) No driveway shall exceed 30 feet in width at the outer or street edge of the driveway; however, driveways for business or commercial installations on state highway system streets may be as much as 36 feet in width at the street edge of the driveway, if such width is first approved by the appropriate representative of the state division of highways and if that agency requests city concurrence in the greater width.
- (2) All radii and/or angle of turnout of the driveway where it meets the curb shall be as shown on the state division of highways standard being used.
- (3) Not more than two driveways shall be permitted to serve one business at the same location, from one street and then only if the two driveways are at least 30 feet apart, except that one additional driveway shall be allowed above the maximum of two for each additional 100 feet of street frontage.
- (4) Any business or commercial establishment located at the intersection of two or more streets, which desires a driveway into two intersecting streets shall construct the driveways so as not to be in conflict with provisions of this or any other section of the city Code pertaining to the regulation of vehicle traffic.
- (5) No driveway apron shall extend out into the street further than the face of the curb.

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- (6) If, in the opinion of the director of public works, strict adherence to all dimensions herein set forth would create a traffic management or safety problem in connection with a specific driveway installation, a modification may be authorized by the director if he is of the opinion that the change would benefit the public and, further, the change would be consistent with the recommendations and requirements contained in the publications entitled "Highway Design and Operational Practices Related to Highway Safety," published by the American Association of State Highway and Transportation Officials and the "Manual on Uniform Traffic Control Devices for Streets and Highways" prepared by the U.S. Department of Transportation, Federal Highway Administration and adopted by the North Carolina Department of Transportation.
- (b) *Driveways for residences:*
    - (1) No driveway for a residence shall exceed 16 feet nor be less than 12 feet at the outer or street edge of the driveways as shown on the two standard driveway turnout drawings. (North Carolina Division of Highways Standards Nos. 848.02 and 848.03.)
    - (2) Residences shall not have more than two driveways; however, one dual driveway up to, but not exceeding, 32 feet may be permitted.
    - (3) Driveways for residences shall also comply with subsection (a)(5) of this section.
    - (4) All radii and/or angle of turnout of the driveways where the same meets the curb shall be as shown on the state division of highways standard being used.
  - (c) *Construction of driveways over street drainage ditches.* In the event the proposed driveway installation involves crossing a street drainage ditch, the director of public works, or his designee, shall determine the quantity, type, size, and cost of the material required (i.e., drainage pipe, backfill, and surface material). Upon receipt of payment for such material by the applicant for the driveway permit, the city shall provide the material, and the department of public works shall, at its convenience, but in a timely fashion, make such installation without further charge to the applicant.

(Code 1971, § 18-25)

### Sec. 66-40. - Construction requirements.

Each person who intends or plans to use any portion of the sidewalk as a private driveway shall, if the director of public works, or his designee, determines that the sidewalk area is inadequate for vehicular traffic, reconstruct the sidewalk in such a manner that the sidewalk is capable of carrying vehicular traffic without creating pedestrian hazards, and in accordance with applicable construction standards with respect to slope, drainage, reinforcement, finish, and other construction features. Provided, however, no person planning to construct a driveway connection within the city shall commence the demolition of any existing street improvement such as, but not limited to, the removal of existing curb, pavement, or the construction of a concrete driveway cut, without first having obtained the required permit, or without first having provided the director of public works, or his designee, a minimum of four hours' notice before beginning any of these operations. Provided, further, all joints in the pavement or curb and gutter must have uniform matching surfaces as are obtained by forms or saw-cutting the asphalt or concrete to be removed. All new construction joints are to be cleaned and filled with an asphalt joint sealant upon completion and are to be inspected for approval by the director of public works, or his designee.

(Code 1971, § 18-26)

### Sec. 66-41. - Penalty.

- (a) Any person who violates this article shall be guilty of a misdemeanor and shall be punished in accordance with section 1-8.
- (b) If such violation shall consist of the incorrect installation of a driveway, the person responsible therefor shall correct such violation within 30 days of the receipt of notice from the city. Should he fail

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to do so, the city, utilizing its own resources or those of a private contractor, may remove and reconstruct the driveway in conformity with this article at the expense of such person who improperly constructed same. Should those expenses not be paid to the city within 30 days of receipt of a bill for same, the responsible party shall be liable to the city in a civil action brought in the general court of justice to recover same as a civil penalty.

(Code 1971, § 18-27)

Secs. 66-42—66-60. - Reserved.

### ARTICLE III. - OBSTRUCTIONS<sup>31</sup>

Footnotes:

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**Cross reference**— Obstruction of traffic generally, § 70-221.

#### DIVISION 1. - GENERALLY

Sec. 66-61. - Generally.

- (a) No brick, stone or wood or other substance obstructing the free passage of persons or vehicles shall be placed or suffered to lie in any of the alleyways, streets or other routes of the city, nor shall any person place on or in any of the streets, sidewalks or alleyways of the city any boxes, crates, casks, or barrels of any description, or any other obstruction of any kind; provided, however, any person erecting a building may, with the permission of the city manager, place building materials for immediate use on the streets in such a way as to not interfere with the usual traffic; provided, further, with the permission of the city manager, building materials and supplies may be stored in construction trailers parked adjacent to the curb immediately adjoining the construction which they serve.
- (b) Nothing herein shall prevent any business located in areas zoned C-1 and C-2 from placing street furniture, including but not limited to benches, tables and chairs, along such business's building or along the perimeter of any street right-of-way directly in front of such business provided that the street furniture does not extend more than 30 inches into the street right-of-way.
- (c) The city shall notify any person in violation of this section of such violation. The person responsible for the violation shall immediately correct such violation within ten days of the receipt of notice from the city. Should any person receiving such notice violate the provisions of this section at any time thereafter, the city shall remove the obstruction at the expense of such person in violation of this section. Should those expenses not be paid to the city within 30 days of receipt of a bill for same, the responsible party shall be liable to the city in a civil action brought in the general court of justice to recover the same as a penalty.

(Code 1971, § 18-38; Ord. No. 2001-22, § 1, 4-10-01)

Sec. 66-62. - Assemblies of persons.

All persons are forbidden from assembling or collecting and standing so as to obstruct any sidewalk or street and all persons to collecting and standing shall disperse and move upon the demand of any police officer.

(Code 1971, § 18-39)

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### Sec. 66-63. - Displays of merchandise.

- (a) No person shall place for display or sale any goods, wares or merchandise of any kind upon any of the sidewalks of the city which shall extend out on the sidewalks; provided, however, nothing contained in this section shall prevent the sale or distribution of newspapers or "shopper" type publications from small dispensers, coin-operated or otherwise, which are unobtrusive and do not obstruct the passage of pedestrians upon the sidewalks of the city. Provided further, however, goods, wares, and merchandise may be displayed and sold on specified portions of the sidewalks in the business areas of the city when specifically authorized by the board of aldermen in connection with special events to be conducted in a business area of the city.
- (b) Nothing herein shall prevent any business located in areas zoned C-1 and C-2 from placing for display or sale any goods, wares or merchandise of any kind along such business's building or along the perimeter of any street right-of-way directly in front of such business provided that the goods, wares or merchandise do not extend more than 30 inches into the street right-of-way.
- (c) The city shall notify any person in violation of this section of such violation. The person responsible for the violation shall immediately correct such violation within ten days of the receipt of notice from the city. Should any person receiving such notice violate the provisions of this section at any time thereafter, the city shall remove the goods, wares or merchandise at the expense of such person in violation of this section. Should those expenses not be paid to the city within 30 days of receipt of a bill for same, the responsible party shall be liable to the city in a civil action brought in the general court of justice to recover the same as a penalty.

(Code 1971, § 18-40; Ord. No. 2001-23, § 1, 4-10-01)

### **Cross reference—** Businesses, ch. 14.

### Sec. 66-64. - When overhead sidewalk protection required.

Before building or remodeling at any place which is in close proximity to the sidewalk, an overhead covered passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage, provided a permit for such has been issued by the building inspector for such construction.

(Code 1971, § 18-41)

### Sec. 66-65. - Vehicles.

No person shall stop or park any push or pull cart or other vehicle used for hauling any articles of merchandise for charge or hire upon any sidewalk or between the curb of any street and the private property line, or in any driveway leading from the street to a private driveway or private property, in front of any business establishment in the city.

(Code 1971, § 18-42)

### Sec. 66-66. - Brush and tree trimmings.

It shall be unlawful for any person to place or allow to be placed any tree trimmings or shrubbery trimmings on any street or sidewalk so as to obstruct the free passage of vehicles or pedestrians.

(Code 1971, § 18-43)

### Sec. 66-67. - Snow and ice removal.



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Each occupant of a store building, residence or other structure in front of which the sidewalk is paved with stone, brick, asphalt or cement, shall remove snow, ice or other obstructions from the sidewalk at the earliest possible time and as soon as the weather permits.

(Code 1971, § 18-44)

Sec. 66-68. - Peddling.

It shall be unlawful for any person to sell, offer to sell, or barter or exchange any fruits, vegetables, farm products, meats, poultry, flowers, potted plants, oysters, seafoods, goods, wares and merchandise or any other thing whatsoever from any automobile, truck, wagon, cart, stand or container parked, placed or standing upon or within any street or sidewalk within the city or within the area between any such street and sidewalk.

(Code 1971, § 18-45)

**Cross reference**— Businesses, ch. 14.

Sec. 66-69. - Signs obstructing motorists' view prohibited.

No person shall place, or permit to remain in place on premises which they occupy, a sign of any nature, whether the same be permanent or portable, along the right-of-way of a public street which, because of its size, height, or the manner in which it is lighted, creates a hazard for motorists in that it obstructs the view of persons operating motor vehicles along such street right-of-way, or of motor vehicle operators who are entering or leaving the premises on which such sign has been placed.

(Code 1971, § 18-12)

Sec. 66-70. - Sidewalk cafes.

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

*Alcoholic beverage* means any beverage containing at least one-half of one percent alcohol by volume including, but not limited to, malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

*Pedestrian way* means an improved walk or passageway intended for use by pedestrians, but not adjacent to any city street.

*Restaurant* means any establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are referred to as restaurants, cafes, grills and other establishments that have a food counter where food is sold.

*Restaurant operator* means the person, firm, or corporation operating a restaurant and associated sidewalk café. This definition includes the owner, and manager if different from the owner, of the restaurant and associated sidewalk café.

*Sidewalk* means that portion of a public street between the curb line, or the lateral lines of the roadway if there is no curb and the adjacent property line that is intended for the use of pedestrians.

(b) *Sidewalk café permit generally.* The city manager or his designee may issue permits for the serving of food and beverages on the city sidewalks and pedestrian ways.

(c) *Application.* Any restaurant desiring to operate a sidewalk cafe shall prepare and file an application with the city manager or his designee which shall contain the following information.

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- (1) The name, address, and telephone number of the restaurant desiring to operate a sidewalk cafe.
  - (2) The name, address, and telephone number of the restaurant operator.
  - (3) A current and valid tax ID.
  - (4) The type of food, beverage, or food product to be sold and served at the sidewalk cafe. If alcoholic beverages are to be sold, the type of such alcoholic beverages.
  - (5) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.
  - (6) A scaled drawing or site plan showing the following:
    - a. The section of sidewalk or alley to be used;
    - b. The section to be kept clear for pedestrian use; and
    - c. The proposed placement of the tables, chairs and other furnishings on the sidewalk or alley. If modifications of the original drawing or site plan are desired by either the city or the applicant, a new drawing must be submitted and approved by the city manager or his designee.
  - (7) Evidence that the applicant has obtained and will maintain a general liability and workers compensation insurance policy in the amount of \$1,000,000.00 for the operation of a sidewalk cafe which names the city as an additional insured.
  - (8) An indemnity statement, approved by the city attorney, whereby the restaurant operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe.
  - (9) A copy of all permits and licenses issued by the state or the city, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, 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 restaurant.
  - (10) A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application.
  - (11) Such additional information as may be requested by the city manager or his designee to determine compliance with this section.
  - (12) A fee as provided in the city fee schedule to cover the cost of processing and investigating the application and issuing the permit.
- (d) *Issuance of permit.* No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:
- (1) The sidewalk cafe must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.
  - (2) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not be more than 50 percent of the interior seating capacity of the associated restaurant. In addition, no more patrons than can be accommodated by the actual seats provided in the sidewalk cafe can occupy the area of the sidewalk cafe.

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- (3) All furnishings used for sidewalk use pursuant to this section:
  - a. Shall comply with the American with Disabilities Act pertaining to pedestrian travel;
  - b. Shall not be at any location which obstructs underground utility access points, ventilation areas, meters, accessible ramps or other facilities provided for physically challenged persons, a building access or exit, or any emergency access or exit way;
  - c. Shall not extend beyond the sidewalk or pedestrian-way frontage of the associated restaurant.
- (4) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe.
- (5) Tables, chairs, and other furnishings utilized for sidewalk cafes shall be of a type that can be easily removed from the public right-of-way. Tables, chairs, and other furnishings used in the operation of the sidewalk cafe must be removed within 24 hours of notice from the city. If such items are not removed upon 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. These items shall not be permanently affixed to the sidewalk and must remain within the designated boundaries as delineated by city-installed sidewalk markers. The city shall also have the right to remove such items immediately in emergency situations. The city shall not be responsible for damage to public sidewalk cafe furnishings under any circumstances.
- (6) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.
- (7) No person shall operate a sidewalk cafe later than 11:00 p.m. After such hour, the area of the sidewalk cafe shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk cafe after such hour shall be subject to the provisions section 46-5.
- (8) The approved site plan for the sidewalk cafe must be posted conspicuously within the place of business at all times.
- (9) All restaurants operating a sidewalk cafe shall keep the approved site area clean.
- (10) The restaurant seeking to operate the sidewalk café shall meet other reasonable conditions that may be necessary as determined by the city manager or his designee.
- (11) Alcoholic beverages may be served at sidewalk cafes provided the following additional requirements are met:
  - a. The sidewalk cafe shall be part of a restaurant and shall otherwise be authorized, permitted, or licensed under the state law and the city code to serve and sell alcoholic beverages for on-premises consumption.
  - b. The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two points of ingress and egress.
  - c. The sidewalk cafe must be included as part of the premises for which an ABC permit for a restaurant, as defined in G.S. § 18B-1000(6), is issued, pursuant to G.S. § 18B-1001, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages on-premises.
  - d. Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises.
  - e. The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled

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substances for the five years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

- f. The applicant shall obtain and maintain an insurance policy in the amount of \$1,000,000.00 for liquor liability, and shall name the city as additional-insured.
- (e) *Denial or revocation of sidewalk café permit.*
- (1) The city manager or his designee may deny or revoke a permit, pursuant to this section, if he finds that the granting or continuation of the permit would not be in the public's interest or if he finds that the operator of the business or establishment has:
    - a. Made a deliberate misrepresentation or provided false information in the application;
    - b. Used the sidewalk or alley in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare;
    - c. Failed to keep the sidewalk or alley clean and free of refuse;
    - d. Failed to maintain any health, business or other permit or license required by law for the operation of the business or establishment;
    - e. Violated any of the terms of this ordinance, or violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances;
    - f. Failed to maintain the amount and type of insurance required herein; or
    - g. Failed to uphold the terms of the permit.
  - (2) The applicant may appeal the denial of the permit to the board of aldermen within 15 working days after the date of the written denial and the board of aldermen may take such corrective action as it shall find necessary. The findings and determination of the board of aldermen shall be final.
  - (3) Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the city manager shall notify the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the board of aldermen in accordance with the provisions of subsection (2).
- (f) *Reservation of rights.* The city reserves the right to require any sidewalk cafe established pursuant to this article 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. The city further reserves the right to amend, alter, or change the permit as provided for in this article upon further review and consideration for reasons of public safety, adopted public policy, or operational concerns without any costs to the city. In such event, the city manager or his designee will notify the applicant by certified mail of amendments to the permit. These amendments will require issuance of a new permit within the time period specified in the notice. If the new permit is issued prior to the expiration of the original permit that is being amended, the fee shall be waived for the amended permit. Failure to comply with the amended permit pursuant to this section will result in automatic termination of the sidewalk café permit.
- (g) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:
- (1) Be issued for the period beginning July 1 and expiring June 30 of each year and in all events will automatically expire on June 30 but may be renewed on a year-to-year basis;
  - (2) Be in addition to the annual privilege license required pursuant to the city's fee schedule;
  - (3) Not be transferable or assignable;

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- (4) Specifically provide whether the sale and consumption of alcohol is permitted under the permit; and
- (5) Be subject to site inspection prior to initial permit issuance as well as annual permit renewal. If such zoning permit is approved, a fee shall be levied for each separate annual issuance of the permit in accordance with the city's adopted fee schedule.

(Ord. No. 2012-142, § 1, 2-28-12)

Secs. 66-71—66-80. - Reserved.

### DIVISION 2. - PICKETING<sup>4</sup>

#### Footnotes:

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**Editor's note**— Ord. No. 2008-18, § 1, adopted April 10, 2008, repealed and reenacted division 2 to read as herein set out. Formerly, division 2, §§ 66-81—66-89, pertained to parades, picket lines and demonstrations, and derived from the Code of 1971, §§ 18-63—18-71.

#### Sec. 66-81. - 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:

*Picket or picketing* means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

*Sidewalk* means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights-of-ways.

*Street* means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and "street" and their cognates are synonymous as used herein.

(Ord. No. 2008-18, § 1, 4-10-08)

#### Sec. 66-82. - Exemptions.

The provisions of this division shall not apply to:

- (1) Funeral processions.
- (2) Students going to or from school classes or participating in educational or recreational activities where such activity is under the supervision and direction of proper school authorities.
- (3) Any governmental agency acting within the scope of its functions.

(Ord. No. 2008-18, § 1, 4-10-08)

## 8.1 – City Ordinance – Streets, Sidewalks & Other Public Places

### Sec. 66-83. - Notice of intent to picket.

- (a) *Notification required.* The organizer of a picket that the organizer knows, or should reasonably know will be by a group of 50 or more individuals shall give notice of intent to picket to the chief of police or designee at least 48 hours before the beginning of the picket. The notice of intent to picket shall include the following information:
- (1) The name, address and contact telephone number for the organizer of the picket;
  - (2) The name, address and contact telephone number of the person giving notice of intent to picket if different from the organizer;
  - (3) The name of the organization or group sponsoring the picket;
  - (4) The location where the picket is to take place;
  - (5) The date and time the picket will begin and end; and
  - (6) The anticipated number of participants, and the basis on which this estimate is made.
- (b) *Receipt of notification.* Upon notice of intent to picket given in accordance with subsection (a), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a picket shall be responsible for maintaining the receipt, and shall present it when so requested by a law enforcement officer or other city official.
- (c) *Violations.* It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 2008-18, § 1, 4-10-08)

### Sec. 66-84. - Picketing regulations.

- (a) Picketing may be conducted on public sidewalks, in any city-controlled park, or in other city-owned areas normally used or reserved for pedestrian movement, including easements and rights-of-way, and shall not be conducted on the portion of the public roadway used primarily for vehicular traffic.
- (b) Notwithstanding subsection (a), picketing may not be conducted:
- (1) On any city-controlled park during a festival that has been permitted at that particular property or when that property has been otherwise reserved for private use;
  - (2) On a median strip; and
  - (3) At a location directed, focused, or targeted at a particular private residence.
- (c) Picketing shall not disrupt, block, obstruct or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance, or other access to buildings, which abut the public sidewalks.
- (d) Written or printed placards or signs, flags, or banners carried by individuals engaged in picketing shall be of such a size and/or carried on the sidewalks or other city-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed 40 inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.
- (e) If more than one group of picketers desire to picket at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers arrived first.

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- (f) Spectators of pickets shall not physically interfere with individuals engaged in picketing. Picketers and spectators of pickets shall not speak fighting words or threats that would tend to provoke a reasonable person to a breach of the peace.
- (g) Picketers and picketing shall be subject to all applicable local, state and federal laws.
- (h) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with G.S. 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.
- (i) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 2008-18, § 1, 4-10-08)

**DIVISION 3. - PUBLIC ASSEMBLIES AND PARADES**

Sec. 66-85. - Definitions.

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

*Alcoholic beverage* means any beverage containing at least one-half of one percent alcohol by volume including, but not limited to, malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

*Appeals official* means the city manager, or his designee.

*City-sponsored event* means the following events:

*City-sponsored event* means the following events:

Name of Event	Month of Event
Beary Merry Christmas	November-December
Christmas Parade	December
City's New Year's Eve Celebration	December
Martin Luther King, Jr. Parade	January
Shriners Parade	January
Neuse River Senior Games	April
Duffest	June
Antique Car Show	May
Twin Rivers YMCA 5K & 10K	May

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Neuse River Days	June
Vision Forward	August
MS Bike Tour	September
Crop Walk	October
MumFest	October
Bridge Run	March
Ghost Walk	October
Library Book Sale (2 times per year)	March/October
National Night Out	August
Relay for Life	April
George Washington's Southern Tour	April

*Demonstration* means a public display of sentiment for or against a person or cause, including protesting.

*Event application* means the application requesting to conduct a non-First Amendment protected public assembly or parade.

*Event committee* means the committee responsible for issuing or denying permits for non-First Amendment protected public assemblies, and shall be comprised of a representative from each city department, a representative of the county convention center, and a representative from the county tourism development authority. The city's director of parks and recreation shall serve as the chair of the event committee.

*Festival* means a concert, fair, festival, exhibit, athletic event, promotion, community event, block party, or similar event.

*Parade* means a march, ceremony, pageant, procession or other similar activity consisting of persons, animals, vehicles or things, or any combination thereof, that disrupts the normal flow of traffic upon any public street. A funeral procession is not a parade.

*Permit application* means the application requesting to conduct a First Amendment protected public assembly or parade.

*Permit official* means the city's director of parks and recreation who is responsible for issuing or denying permits for First Amendment protected public assemblies.



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*Public assembly* means:

- (1) A festival or demonstration which is reasonably anticipated to obstruct the normal flow of traffic upon any public street and that is collected together in one place; or
- (2) A festival in any city-controlled park.

*Public assembly alcohol permit* means a public assembly permit issued for an event pursuant to section 66-86(g).

(Ord. No. 2008-18, § 2, 4-10-08; Ord. No. 2012-136, § 1, 2-14-12; Ord. No. 2012-143, § 1, 2-28-12; [Ord. No. 2014-281, § 1, 11-25-2014](#) ; [Ord. No. 15-008, § 1, 4-14-15](#) ; [Ord. No. 17-041, § 1, 11-4-17](#) ; [Ord. No. 18-029, § 1, 5-8-18](#) ; Ord. No. [19-012](#), § 1, 5-14-19)

Sec. 66-86. - Public assembly and parade permits.

- (a) *Permit required.* No public assembly or parade is permitted unless a permit allowing such activity has been obtained pursuant to this division. No permit shall be required for city events.
- (b) *Permit and event applications.* A permit application shall be made in writing on a form prescribed by the permit official at least 30 days before the commencement of the event. Notwithstanding the preceding sentence, the permit official shall consider an application that is filed less than 30 days before the commencement of the proposed event where the purpose of such event is a spontaneous response to a current event, or where other good and compelling causes are shown. An event application shall be made in writing on a form prescribed by the event committee at least 60 days before the commencement of the event. Each application must contain the following:
  - (1) The name, address, and telephone number for the person in charge of the proposed event and the name of the organization with which that person is affiliated or on whose behalf the person is applying (collectively "applicant");
  - (2) The name, address, and telephone number for an individual who shall be designated as the responsible planner and on-site manager for the event;
  - (3) The date, time, place, and route of the proposed event, including the location and time that the event will begin to assemble and disband, and any requested street closings;
  - (4) The anticipated number of persons and vehicles, and the basis on which this estimate is made;
  - (5) A list of the number and type of animals that will be at the event and all necessary health certificates for such animals; and
  - (6) Such other information, attachments, and submissions that are requested on the application form.
- (c) *Permitting criteria.* A permit application may be denied for any of the following reasons:
  - (1) The application is not fully completed and executed;
  - (2) The applicant has not tendered any required indemnification agreements, insurance certificates, or security deposits within times prescribed;
  - (3) The application contains a material falsehood or misrepresentation;
  - (4) The applicant is legally incompetent to contract or to sue and be sued;
  - (5) The applicant has on prior occasions made material misrepresentations regarding the nature or scope of an event;
  - (6) The applicant has previously permitted a violation or has violated the terms of a public assembly or parade permit issued to or on behalf of the applicant;

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- (7) The applicant has on prior occasions damaged city property and has not paid in full for such damage;
- (8) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple simultaneous events;
- (9) The proposed event would conflict with previously planned programs organized, conducted, or sponsored by the city and previously scheduled at or near the same time and place;
- (10) The proposed event would present an unreasonable danger to the public health or safety;
- (11) The proposed event would substantially or unnecessarily interfere with traffic;
- (12) The event would likely interfere with the movement of emergency equipment and police protection in areas contiguous or in the vicinity of the event.
- (13) There would not, at the time of the event, be sufficient law enforcement and traffic control officers to adequately protect participants and non-participants from traffic related hazards in light of the other demands for police protection at the time of the proposed event;
- (14) The applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations concerning the sale or offering for sale of any goods or services;
- (15) The use or activity intended by the applicant is prohibited by law;
- (16) For non-First Amendment protected public assemblies or parades, the following criteria shall also apply:
  - a. The cultural and/or educational significance of the event;
  - b. The extent to which the event contributes to the economic revitalization and business development of the city;
  - c. The impact and/or cost of the event to city support services;
  - d. The impact of the event to the public health, safety and welfare;
  - e. The impact of the event on business and resident populations within or adjacent to the proposed event site;
  - f. The evaluation of any previous event produced by the event organizer with regard to planning, quality, public safety, and payment of invoices;
  - g. The frequency and timing of the event or similar events.

Unless subject to subsection (c)(16), nothing in this section shall authorize the permit official to deny a permit based upon political, social, or religious grounds or reasons, or based upon the content of the views expressed. The permit official or the event committee may attach reasonable conditions to any permit approval.

- (d) *Costs and fees.* For public assemblies and parades other than city-sponsored events, the applicant shall be responsible for all direct costs incurred by the city associated with the public assembly or parade, including but not limited to hiring and paying off-duty law enforcement officers, reimbursing the city for the costs of providing on-duty law enforcement officers to appropriately police street closures or to provide internal festival security, paying necessary emergency medical technicians, and providing street and sidewalk cleaning, trash receptacle placement, trash removal, and trash disposal. All such costs and fees shall be determined consistent with the city's fee ordinance. Costs and fees for city-sponsored events shall be paid to the city for those services for which costs and expenses were paid during calendar year 2011 for each respective city-sponsored event, plus vendor fees as provided in the city's fee ordinance.

The permit official or event committee, in consultation with relevant city department heads, shall determine the costs that will be incurred by the city associated with the public assembly or parade taking into consideration all relevant information including the following:

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- (1) The proposed location of the special event or route of the parade;
- (2) The time of day that the public assembly or parade is to take place;
- (3) The date and day of the week proposed;
- (4) The general traffic conditions in the area requested, both vehicular and pedestrian. Special attention is given to the rerouting of the vehicles or pedestrians normally using the requested area;
- (5) The number of marked and unmarked intersections along the route requested, together with the traffic control devices present;
- (6) If traffic must be completely rerouted from the area, then the number of marked and unmarked intersections and the traffic control devices are to be taken into consideration;
- (7) The estimated number of participants;
- (8) The estimated number of viewers;
- (9) The nature, composition, format and configuration of the special event or parade;
- (10) The anticipated weather conditions;
- (11) The estimated time for the special event or parade;
- (12) For festivals, whether alcohol will be served, live music offered, or retail sales stations provided, and the number and location of alcohol service stands, music stages, and retail stands.

Prior to the issuance of the permit, the permit official or event committee shall provide the applicant with a summary of the city's costs associated with the event or parade, which the applicant shall pay to the city upon issuance of the permit.

- (e) *Time and notice of decision.* The permit official shall approve or deny a permit application within 20 days of receipt. The event committee shall approve or deny an event application within ten days of receipt. A notice of denial shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal for measures by which the applicant may cure any defects in the application or otherwise procure a permit. Where an application is denied because the proposed event would conflict with another event that has or will be approved, the permit official or event committee shall propose an alternative place, if available for the same time, or an alternative time, if available for the same place.
- (f) *Appeals.*
  - (1) An applicant may appeal the denial of a permit application in writing within ten days after notice of the denial has been received. Within five business days, or such longer period of time agreed to by the applicant, the appeals official shall hold a quasi-judicial hearing on whether to issue the permit or uphold the denial. The applicant shall have the right to present evidence at said hearing. The decision to issue or uphold the denial shall be based solely on the approval criteria set forth in this section. The appeals official shall render a decision on the appeal within five business days after the date of the hearing. In the event that the purpose of the proposed event is a spontaneous response to a current event, or where other good and compelling causes are shown, the appeals official shall reasonably attempt to conduct the hearing and render a decision on the appeal as expeditiously as is practicable.
  - (2) The decision of the appeals official is subject to review in the county superior court by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after the applicant has received notice of the decision. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the

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reviewing court that allows for a longer time period, the city shall file its brief within 15 days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three days to this time limit, in accordance with G.S. 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control. The North Carolina Rules of Appellate Procedure shall govern an appeal by an applicant from the county superior court.

- (g) *Possession, consumption, sale or distribution of alcoholic beverages at festivals held partially or wholly at city-owned or city-controlled property or facilities, and/or on public sidewalks, parks, alleys, streets, and rights-of-way.*
- (1) Alcoholic beverages can be possessed, consumed, sold, or distributed at festivals upon the issuance of a public assembly alcohol permit (hereinafter permit) as set forth in this section. Said permit shall be issued in conjunction with a public assembly permit for a festival as the term is defined in section 66-85 of the city code, and only after the applicant has provided the city with all other state and local permits allowing the possession, consumption, sale and distribution of alcohol.
  - (2) A public assembly alcohol permit may be issued for a festival to a non-profit corporation duly incorporated in the state and having received its status as a tax-exempt organization under section 501(c) of the Internal Revenue Code, or any unit of local government whose property is tax exempt, each of which to be considered an event organizer under this section.
  - (3) An event organizer obtaining a permit as set out herein may allow vendors to sell or distribute alcoholic beverages without such vendors obtaining a separate permit provided that such event organizer shall be responsible for such vendor having all state or local permits necessary to sell or distribute such alcoholic beverages and the required insurance in place for the event.
  - (4) A permit must be approved at least ten days in advance by the city manager or his designee. The city manager or his designee is authorized to request such information from the event organizer that will allow him or his designee to make such determination in issuance of the permit.
  - (5) A fee shall be levied for each permit issued pursuant to this section in accordance with the city's adopted fee schedule.
  - (6) Alcoholic beverages as provided in this section can only be possessed, consumed, sold, or distributed in such area as approved by the city manager or his designee, which area to be conspicuously marked by the event organizer. Upon approval of the city manager or his designee, instead of marking such area, the event organizer can be authorized to give such notice by written or oral notice to the attendees.
  - (7) The event organizer must provide colored wrist bands or other identification devices, approved by the chief of police or his designee, to be used by the wearer or bearer to purchase alcoholic beverages. New colored wrist bands or different identification devices shall be used on succeeding days of multi-day events. Before issuing a wrist band or identification device, the event organizer is responsible for determining if the person to be issued a wrist band or identification device is of the legal age to possess alcoholic beverages.
  - (8) It is unlawful for a person authorized to purchase an alcoholic beverage as set out herein to pass on an alcoholic beverage to any other person not wearing an authorized wristband.
  - (9) No person shall possess or consume an alcoholic beverage except as set out herein and only upon wearing the appropriately colored wristband issued, or possessing the particular identification device designated, for the day of the event.
  - (10) Alcoholic beverages not obtained or acquired as set out in this section are not permitted and the possession, consumption, sell, or delivery of such alcoholic beverages is considered a violation of this article.
  - (11) A wristband or other identification device issued as set out herein is not transferable and can only be worn by the person to whom such wristband is issued by the event organizer.

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- (12) The city manager is authorized to require any applications and proofs as he may deem necessary to make a determination on the ability of an event organizer to sell or distribute alcoholic beverages as provided herein.
  - (13) The city manager may require the event organizer to hire an off-duty police officer or officers to oversee alcohol sales at the event, and may place any other reasonable conditions on a permit issued pursuant to this section.
  - (14) Issuance of the permit will be conditional upon the applicant obtaining an insurance policy in the amount of \$1,000,000.00 showing general liability, liquor liability, and workers compensation, and which names the city as additional-insured for the general liability and liquor liability. Said policy shall remain in effect for the entire time period of the special event.
  - (15) Permits issued in accordance with this article are effective for the time period and event specified.
  - (16) Permits issued pursuant to this section shall not be transferrable or assignable.
- (h) *Denial or revocation of public assembly alcohol permit for possession, consumption, sale or distribution of alcoholic beverages at festivals held partially or wholly at city-owned or city-controlled property or facilities, and/or on public sidewalks, parks, alleys, streets, and rights-of-way.*
- (1) The city manager or his designee may deny or revoke a public assembly alcohol permit pursuant to this section if he finds that the granting or continuation of the permit would not be in the public's interest or if he finds that the event organizer or a vendor has:
    - a. Made a deliberate misrepresentation or provided false information in the application;
    - b. Operated such public facility, park, sidewalk, alley, street, or right-of-way in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare;
    - c. Failed to keep the sidewalk, park, street, or right-of-way clean and free of refuse;
    - d. Failed to maintain any health, business or other permit or license required by law;
    - e. Violated any of the terms of this section;
    - f. Failed to obtain or maintain the amount and type of insurance required herein; or
    - g. Failed to uphold the terms of the permit.
  - (2) The applicant may appeal the denial of the permit to the board of aldermen within 15 working days after the date of the written denial and the board of aldermen may take such corrective action as it shall find necessary. The findings and determination of the board of aldermen shall be final.
  - (3) Before the revocation of a permit, the city manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the city manager shall notify the permit holder in writing of this decision and the reasons therefor. A decision of the city manager to revoke a permit may be appealed to the city council in accordance with the provisions of subsection (2).
- (i) It shall be unlawful for any person to violate any provision of this section or to violate any term or condition of a permit issued pursuant to this section.

(Ord. No. 2008-18, § 2, 4-10-08; Ord. No. 2011-107, § 1, 5-24-11; Ord. No. 2012-136, § 2, 2-14-12; Ord. No. 2012-143, § 2, 2-28-12)

Sec. 66-87. - Public assembly and parade regulations.

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- (a) It shall be unlawful to unreasonably hamper, obstruct, impede, or interfere with a public assembly or parade, or with any person, vehicle, or animal participating or used in the public assembly or parade.
- (b) It shall be unlawful for the operator of a motor vehicle to drive between vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.
- (c) Spectators of a public assembly or parade and persons attending or participating in a public assembly or parade picketing shall be subject to all applicable local, state and federal laws including, but not limited to G.S. 14-277.2 (weapons).
- (d) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with G.S. 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.

(Ord. No. 2008-18, § 2, 4-10-08)

Secs. 66-88—66-110. - Reserved.

### ARTICLE IV. - STORM DRAINAGE FROM PRIVATE PROPERTY<sup>5</sup>

#### Footnotes:

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**Cross reference**— Drainage, erosion control and stormwater management, app. A, § 15-306 et seq.

Sec. 66-111. - Participation by the city restricted.

The city shall under no circumstances participate in the installation of storm sewers on private property unless the surface water causing a drainage problem shall originate primarily on other property, as in the case of ditches, canals, or natural drains which serve a substantial area of the city.

(Code 1971, § 18-83)

Sec. 66-112. - Application for city participation.

Upon application by a property owner for city participation in the installation of storm drainage structures on private property, the city manager and the city engineer shall make an investigation to determine the nature of the problem and the feasibility of city participation, and their decision shall be final.

(Code 1971, § 18-84)

Sec. 66-113. - Contract for installation; deposit.

If the drainage problem is such as would fall within the circumstances under which the city may participate, and the project shall be approved by the city manager, the city manager shall cause an estimate to be made of the cost of construction, exclusive of labor. Upon the execution by the property owner or owners of a contract in a form approved by the city manager, and upon the property owner depositing with the city treasurer the entire estimated cost of construction, exclusive of labor, at such time as is convenient to the department of public works, the project shall be undertaken. If the deposit made

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by the property owner shall be more than the actual cost of construction, exclusive of labor, the surplus thereof shall be refunded to the property owner on completion of such project. If the deposit shall be insufficient to cover the entire cost, exclusive of labor, the property owner shall be required to pay such additional cost to the city.

(Code 1971, § 18-85)

Sec. 66-114. - Availability of funds.

In no event shall the city manager approve any project pursuant to this article unless funds are available for such purpose by direct appropriation of the board of aldermen.

(Code 1971, § 18-86)

Sec. 66-115. - Additional charges to property owner.

- (a) Included in the expenses to be borne by the property owner shall be a reasonable charge for labor and equipment necessary to transport the materials to the owner's premises should city labor and equipment be necessary.
- (b) Also to be included in the expenses to be borne by the property owner shall be the cost of furnishing additional fill material at the job site if it is required that additional fill material be procured.
- (c) Should excessive excavation or clearing be required in connection with the installation of drainage, the entire expense of such work shall be computed in determining the cost to be borne by the property owner.

(Code 1971, § 18-87)

Sec. 66-116. - Maximum diameter of pipe; number of lines.

The maximum size storm drainage pipe to be installed by the city under this article shall be 60 inches in diameter, and only two lines of pipe shall be installed in any one storm drain. If it appears necessary to install drains of greater size or with more than two lines, each project shall be considered on an individual basis and the board of aldermen must determine whether the city shall participate in the project.

(Code 1971, § 18-88)

Sec. 66-117. - Restoration of existing storm sewers.

The city will participate in the restoration of existing storm sewers on private property only to the extent described in this article and only after execution of the required contract by the property owner.

(Code 1971, § 18-89)

Sec. 66-118. - City not to be liable to property owner.

The agreement to be executed by the property owner pursuant to this article shall include a provision whereby the city is relieved of any responsibility whatsoever to the property owner for any damage to his property resulting from the construction of such drainage.

(Code 1971, § 18-90)

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### Sec. 66-119. - Maintenance and repairs.

The city shall not assume any responsibility whatsoever for the maintenance or repair of any storm drainage system as is referred to in this article, whether heretofore or hereafter installed.

(Code 1971, § 18-91)

### Sec. 66-120. - Permit required for private installations.

No person shall install any storm drainage system in the city which shall affect the drainage of adjacent properties unless and until a permit has been granted by the city engineer. The permit shall include the approval of the materials to be used in such installation. No permit shall be granted until a thorough study has been made of the water shed to determine the proper size of the drainage structure.

(Code 1971, § 18-92)

### Secs. 66-121—66-140. - Reserved.

## ARTICLE V. - STREET ADDRESSES<sup>6</sup>

### Footnotes:

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**State Law reference**— Requirement to develop a comprehensive plan for a coordinated street system, G.S. 136-66.2.

### Sec. 66-141. - Purpose and intent.

The purpose and intent of this article is to provide a uniform system of street addresses for all properties and buildings throughout the city in order to facilitate adequate public safety and emergency response service to minimize difficulty in locating properties and buildings for public service agencies and the general public.

(Code 1971, § 18-93)

### Sec. 66-142. - Definitions.

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

*Address program administrator* means the official of the city charged by the city manager with the administration of this article.

*Building* means a structure designed to be used as a place of occupancy, storage or shelter.

*Driveways* means a private way, beginning at the property line of a lot abutting a public road, private road, easement or private right-of-way, giving access from a public road, recorded easement, recorded private road or private right-of-way, and leading to a building, use, or structure on that lot.

*Street* means a public or private one-way or two-way road for ingress and/or egress. This definition does not include driveways.



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*Street address* means the combination of building and/or lot numbers and street names assigned by the city which identifies a particular building or lot. This definition does not include driveways.

(Code 1971, § 18-94)

**Cross reference**— Definitions generally, § 1-2.

Sec. 66-143. - Administration and application.

The address program administrator will be responsible for the administration of this article, including:

- (1) Assigning street address numbers to properties and buildings.
- (2) Recommending changes of existing addresses when necessary to facilitate sequential house numbers along a street.
- (3) Designating individual unit addresses within multiple housing units in conformity with this article.

(Code 1971, § 18-95)

Sec. 66-144. - Display of street address numbers.

- (a) Every property owner shall purchase and display official address numbers, attaching them to the building to which they apply so that they shall be visible from the street. The following criteria shall be used to display the numbers properly:
  - (1) Address numbers must be a minimum of three inches in height so as to be seen easily from the street.
  - (2) Numbers of multiple dwelling units and nonresidential buildings shall be at least six inches in height and shall be placed on the front of the building facing the street or on the end of the building nearest the street. Individual units will also be required to display at least three-inch unit numbers on the front door or immediately adjacent to the door.
  - (3) Address numbers must be set on a background of a contrasting color.
  - (4) On a corner lot, the house number should face the street named in the address.
  - (5) If a building is more than 75 feet from the street on which it fronts, the address number shall be displayed on a sign attached to a fence, gate, lawn, stake, mailbox, or other suitable structure at or near the street right-of-way line so as to be clearly visible from the street.
  - (6) Street address numbers shall be plain block numbers; script may not be used.
  - (7) Mobile homes located on individual lots shall be treated as single-family homes.
  - (8) Each lot in a mobile home park will have a separate address number assigned. The address number of each lot must be clearly displayed on the lots rather than mounted on the mobile home unit so that such number will be legible from the road, or from the private driveway through the park, as the case may be.
- (b) The address program administrator may authorize alternate methods of displaying house numbers which meet the intent of this article when strict adherence to these standards cannot reasonably be met.

(Code 1971, § 18-96)

Sec. 66-145. - Names of new streets within the city.

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The board of aldermen of the city has the power to designate the names of all streets in the city pursuant to section 66-2 and G.S. 160A-296(a). It is hereby declared to be the policy of the city that newly created streets within the city shall not be given names that duplicate or are phonetically similar to existing streets in the county, regardless of the use of different suffixes.

(Code 1971, § 18-97)

Sec. 66-146. - Enforcement.

- (a) No building permit shall be issued until an official house number has been assigned for a lot. The record plat of any subdivision must show the address for each lot created or recorded.
- (b) No certificate of occupancy under the zoning ordinance or the land use ordinance of the city will be issued until street address numbers are properly displayed.
- (c) Owners or occupants of buildings already constructed, or mobile homes, which do not comply with this article will be notified and requested to meet these requirements within 60 days of the date of notification. A warning notice will be issued after 60 days if the requirements have not been met. If the owner or occupant does not bring the property in compliance with this article within 30 days of delivery of a warning notice by registered or certified mail, or by hand delivery, to the building or mobile home in violation, enforcement action, authorized by G.S. 160A-175, may be initiated.

(Code 1971, § 18-98)

Secs. 66-147—66-170. - Reserved.

### ARTICLE VI. - STREET LIGHTING SERVICE<sup>[2]</sup>

Footnotes:

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**Editor's note**— Ord. No. 1996-38, adopted June 1, 1996, did not specifically amend this Code; hence, its inclusion as Art. VI, §§ 66-171—66-180, was at the discretion of the editor.

Sec. 66-171. - Availability.

This schedule is available for service supplied in the lighting of dedicated public streets, highways, and municipally-owned and -operated public parks by lighting fixtures mounted on city-owned poles for the City of New Bern.

(Ord. No. 1996-38, § 1, 6-1-96)

Sec. 66-172. - Service.

The service supplied by the city will include the installation of a street lighting system, according to standards and requirements, which will be owned, maintained, and operated by the city, including the furnishing of the electricity required for the illumination of the lamps from dusk to dawn. The lumen ratings of lighting units listed under the monthly rate indicates the general class of the lamp.

(Ord. No. 1996-38, § 1, 6-1-96)

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Sec. 66-173. - Monthly rate.

(a) *Overhead service.*

- (1) *Basic rate.* The basic rate per fixture defined below will be billed for installations of standard street lighting fixtures installed on the city's system distribution poles. The basic rate does not include the monthly charges for additional facilities, street lighting poles, underground service, or any contribution required under this schedule and under the street lighting service regulations.

Mercury Vapor	Monthly Charge Per Fixture
7,000 Lumen semi-enclosed (175w)	\$ 6.50
7,000 Lumen (175w)	\$ 6.50
21,000 Lumen (400w)	\$10.16
<i>Sodium Vapor</i>	
9,500 Lumen (100w)	\$ 6.00
22,000 Lumen (150w)	\$ 6.50
27,500 Lumen (250w)	\$ 8.30
50,000 Lumen (400w)	\$10.16
50,000 Lumen (400w Flood)	\$11.16

(Ord. No. 1996-38, § 1, 6-1-96)

Sec. 66-174. - Additional facilities.

- (a) Special poles and lighting fixtures normally not provided by the utility can be provided at the municipality's cost for fixtures.
- (b) For primary conductor extensions, two percent of the estimated installed cost of the required facilities.
- (c) For a bracket or mast arm in excess of six feet for underground service or 16 feet for overhead service, two percent of the estimated installed cost of the required facilities of that for standard facilities.

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- (d) For an underground circuit in excess of 250 feet for a street lighting pole, two percent of the estimated installed cost of the excess circuit. The customer has the option of making a nonrefundable contribution of the estimated installed cost of an underground circuit in excess of 250 feet per span in lieu of paying the monthly facilities charge for such excess circuit.
- (e) For a metal pole, two percent of the estimated installed cost of overhead or underground metal poles requiring special construction or features which are in excess of the estimated installed cost of standard underground metal poles.
- (f) When more energy-efficient and better-suited lighting units become available to the city, they will be made available for use under this schedule. The appropriate charges for such units will be developed by the city electric utility department. Said charges are to be incorporated by amendment to this schedule by the city.

(Ord. No. 1996-38, § 1, 6-1-96)

### Sec. 66-175. - Nonrefundable contribution.

- (a) In the event that rock, unstable soil, or other conditions require the use of materials and methods of installation other than the city's normal materials and methods, the customer will contribute the additional cost incurred thereby.
- (b) Customer will contribute the estimated cost of installing cables under paved or landscaped surface areas; however, the customer may cut and replace the pavement or surface in lieu of making the contribution.
- (c) Service supplied under the monthly rate in this schedule does not include the conversion of existing overhead street lighting circuits to underground. Should the customer desire such a conversion under this schedule, the customer will pay to the city, in addition to the applicable contribution and charges herein, the estimated net investment depreciated, plus removal cost, less salvage value of the overhead conductor being removed.

(Ord. No. 1996-38, § 1, 6-1-96)

### Sec. 66-176. - Sales tax.

To the above charges [section 66-175] will be added any applicable North Carolina sales tax.

(Ord. No. 1996-38, § 1, 6-1-96)

### Sec. 66-177. - Payments.

Bills are due when rendered and are payable within 15 days from the date of the bill. If any bill is not so paid, the city has the right to suspend service in accordance with its service regulations.

(Ord. No. 1996-38, § 1, 6-1-96)

### Sec. 66-178. - Contract period.

The contract period shall not be less than 10 years.

(Ord. No. 1996-38, § 1, 6-1-96)

### Sec. 66-179. - General.

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Services rendered under this schedule are subject to the provisions of the city's street lighting service regulations filed at city hall.

(Ord. No. 1996-38, § 1, 6-1-96)

Sec. 66-180. - Effective.

Effective for bills rendered on or after July 1, 1995.

(Ord. No. 1996-38, § 2, 6-1-96)

Secs. 66-181—66-199. - Reserved.

### ARTICLE VII. - ENCROACHMENTS

Sec. 66-200. - Purpose and intent.

The purpose and intent of this article is as follows:

- (1) The public streets, whose primary purpose is movement of vehicular and other traffic, are valuable public resources that have required, and will continue to require, substantial investment by the city.
- (2) The city desires to structure and implement a fair and orderly process for the application for, and granting of, permission for private parties to occupy and use the public street or street rights-of-way, consistent with applicable law, and which appropriately accounts for the varied reasons that private parties seek such permission.
- (3) The city desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the public streets and street rights-of-way, now and in the future, and to preserve adequate capacity for existing and future uses of the public streets and street rights-of-way.
- (4) The city intends to exercise, to the fullest extent permitted by applicable law, its authority in regulating the occupation and use of public streets and street rights-of-way.
- (5) Consistent with the foregoing, the city desires to provide a simplified approval process for minor encroachments into streets, street rights-of-way by adjoining landowners and into utility and access easement interests of the city by the adjoining landowner where the landowner owns the property that is subject to the city's easement interest, as provided in section 66-213.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-201. - Definitions.

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

*City manager* means the manager or assistant manager of the city of New Bern, or their designee.

*Encroach or encroachment* means any digging in public streets or street rights-of-way, or the placing therein, over or below any pipes, poles, wires, fixtures or other appliances of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances of any kind on, above or below the ground surface in areas in which the city has a utility or access easement, unless such activity is permitted by the applicable easement.

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*Minor encroachment* means an encroachment for irrigation systems, fencing and landscape plants and material provided all of the following requirements are met:

- (1) A minor encroachment is only available to an adjacent property owner for encroachments into:
  - a. Public streets and street rights-of-way; or
  - b. City utility or access easement areas when the property owner owns the underlying fee;
- (2) There is no disruption, even temporarily, of traffic flow;
- (3) There is no impact to paved or concrete surface; and
- (4) There is no impact to the city's ability to maintain or operate public streets, street rights-of-way or its easement interests.

*Person* shall mean an individual, partnership, association, organization, corporation or any other legal entity including any lawful successor transferee of said individual or entity.

*Public streets* means the public streets, sidewalks, alleys, bridges and other ways of public passage within the city's corporate limits, except for any such streets or bridges over which authority and control is exercised by the board of transportation.

*Street rights-of-way* or a *street right-of-way* means the real property interest the city holds over or adjoining existing public or private streets, or in corridors reserved for future public streets.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-202. - Permission to encroach, through appropriate agreement, required.

- (a) It shall be a violation of this article for any person to encroach upon any public street, street rights-of-way or city easement areas without first receiving permission to do so from the city pursuant to this article.
- (b) Permission to encroach shall be granted in appropriate cases through the terms of a non-exclusive, revocable encroachment permit or encroachment agreement, to be signed by the applicant and the city manager, using whatever form the city devises for that purpose.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-203. - Application for permission to encroach.

- (a) Application for permission to encroach upon a public street or street right-of-way shall be submitted to the city manager, and shall be submitted on any form the city manager devises for that purpose.
- (b) All persons desiring authorization to encroach upon a public street or street right-of-way must provide the city with the following information:
  - (1) Identify the relevant public street or right-of-way;
  - (2) A description of the items the person desires permission to install in the public street or right-of-way, and the purpose those items would serve;
  - (3) A description of how the person intends to install the item in the public street or street right-of-way, including whether any excavation in the public street or right-of-way will be required;
  - (4) Whether installation of the relevant items will cause any temporary disruption in traffic flow in any public street, and if so, what precautions the person intends to take to minimize that disruption, and to protect human safety;
  - (5) A site plan, with sufficient detail to show the proposed location of the items the person seeks permission to install in the public street or street right-of-way, including any manholes or

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overhead poles, the size, type and proposed depth of any conduit or other enclosures, and the proximity of the person's items, if installed, to all existing poles, utilities, sidewalks, pavement, telecommunications or cable systems, and other improvements existing in the relevant public streets or street rights-of-way;

- (6) A complete set of construction plans for the proposed facilities evidencing compliance with the National Electric Safety Code, and engineered drawings for the proposed facilities if required by the National Electric Safety Code;
  - (7) A proposed construction schedule and sequence;
  - (8) Identify and describe any insurance the person has, or would obtain if granted permission to encroach on the relevant public street or street rights-of-way, that will cover his desired activities in the public street or street rights-of-way. (Homeowners seeking permission to encroach on a street right-of-way adjoining their residence should check their homeowners' policy in this regard);
  - (9) The name, address and telephone number of the person the city may contact concerning the application; and
  - (10) Such other information as the city may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.
- (c) Business and other commercial applicants, in addition, should submit the following information:
- (1) A general description of the person's business; and
  - (2) A description of the services, if any, the person proposes to provide to others through the infrastructure it desires permission to install in the right-of-way, identifying also the geographic scope in which such services would be provided, and to whom such services would be provided.
- (d) The city may reject any application to encroach upon a public street or street right-of-way that is incomplete or otherwise fails to comply with the terms of this article or other applicable law.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-204. - Public availability of applications to encroach.

Applications and other submissions by which any person seeks permission to encroach upon any public street or street right-of-way, including any additions, modifications or amendments thereto, shall be available for public inspection at the city public works department during normal business hours.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-205. - Procedure for consideration of, and action on, applications.

- (a) The authority to grant a private party permission to encroach upon a public street or street right-of-way shall be exercised by the city manager.
- (b) The city may make such investigations and take or authorize the taking of such other steps as it deems necessary or appropriate to consider and act upon applications to encroach upon a public street or street right-of-way and determine whether such applications should be granted.
- (c) If a business or commercial applicant seeks permission to encroach upon public street or street right-of-way, the city manager may set a public hearing to give the public an opportunity to comment on the application.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

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### Sec. 66-206. - Factors for review of application to encroach.

- (a) In deciding whether to grant any application for permission to encroach upon any public street or street right-of-way, the city may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:
  - (1) The willingness and ability of the person to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the encroachment;
  - (2) The ability of the person to maintain the property of the city in good condition throughout the term of the relevant encroachment agreement;
  - (3) Any services or uses of the public streets or street rights-of-way that may be precluded by the grant of the requested permission to encroach, and the adverse impact of the proposed encroachment on the efficient use of the public streets and street rights-of-way at present and in the future;
  - (4) The adequacy of the terms and conditions of the proposed encroachment agreement to protect the public interest, consistent with applicable law; and
  - (5) Any other public interest factors such as public safety, or other considerations that the city has a lawful right to consider and that are deemed pertinent by the city for safeguarding the interests of the city and the public.
- (b) Consistent with applicable law, the city may develop and implement policies and requirements to ensure that the public streets have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating a person for the right to encroach upon a public street or street right-of-way, the city may consider the person's proposals for addressing capacity needs and compliance with city policies and requirements in that regard.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-207. - Indemnity, insurance and bonding requirements, and other terms and conditions.

- (a) No permission to encroach on any public street or street right-of-way shall be granted unless, as a condition to that grant, the person is willing to and agrees to indemnify, defend and hold harmless the city, its officers, boards, commissions and employees against any and all claims and liabilities arising from the person's activities or items in the public street or street right-of-way, including reasonable attorneys fees and court costs.
- (b) Depending upon the extent of a person's desired excavation, construction or other activities in any public street or street rights-of-way, the city may exercise its authority to require the person to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance, covering such activities, pursuant to terms acceptable to the city.
- (c) The other terms and conditions by which the city grants a person authority to encroach upon a public street or street right-of-way shall be set forth in the relevant permit or encroachment agreement.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-208. - Responsibilities of persons granted permission to encroach.

It shall be the responsibility of each person granted permission to encroach upon a public street or street right-of-way to:



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- (1) Ensure that any excavation, construction or other work done by them or on their behalf in the relevant public street rights-of-way is performed consistent with the city's published standard specifications and details for construction activities, including the requirements therein regarding restoration of the affected area;
- (2) All work shall be performed consistent with the requirements of the National Electric Safety Code, and all federal, state or other applicable laws, rules and regulations;
- (3) If requested by the city due to a need for the city or its contractors to complete any work in a public street or street right-of-way, temporarily remove or relocate their items located below or above the public street, or within the street right-of-way at their own cost and expense;
- (4) If requested by the city due to any right-of-way widening or relocation, permanently remove or relocate their items within the newly widened or relocated right-of-way at their sole cost and expense; and
- (5) Otherwise comply with the terms of their encroachment permit or agreement, and all applicable laws, ordinances, resolutions, rules, regulations and other directives of the city and any federal, state or local governmental authority having jurisdiction over the person's activities in or near such rights-of-way.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-209. - Authority to encroach is nonexclusive.

Any grant of permission to encroach upon a public street or street right-of-way given by the city pursuant to this article shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional rights of access to the public streets or street rights-of-way that it deems appropriate.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-210. - Remedies.

In the event that any person encroaches upon a public street or street right-of-way without prior permission from the city, or violates the conditions by which authority to do so were granted by the city, or otherwise violates any provision of this article, the city manager may, in addition to any other remedies provided by any other applicable article or other law:

- (1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities in the public street or street right-of-way, and to restore the affected area;
- (2) Revoke any permission previously granted allowing the permission to encroach in a public street or street right-of-way;
- (3) Issue civil penalties up to \$500.00 per day for any continuing violation of this article; or
- (4) Any combination of the above-referenced remedies.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

Sec. 66-211. - Appeals.

- (a) In cases where the city manager denies an application to encroach upon a public street or street right-of-way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite encroachment agreement, the applicant may seek review of the city manager's decision before the board of aldermen.

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- (b) Any person subject to any enforcement action pursuant to section 66-210 may appeal the enforcement action to the board of aldermen.
- (c) In any case where a person seeks review by the board of aldermen of any decision made by the city manager pursuant to this section, the applicant must request a hearing before the board of aldermen in writing to the city's public works department, within ten days of the applicant's notice of the city manager's decision at issue. In such submission, the applicant must identify the issues or disagreements he has with the city manager's decision. In such cases, the board of aldermen shall make the decision through adoption of an appropriate resolution, and such decision shall be final.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-212. - Applicability.

To the extent permitted by law, the city may determine to apply all or certain provisions of this article to persons granted permission to encroach upon a public street right-of-way before the effective date of the ordinance from which this article is devised.

( [Ord. No. 16-025, § 1, 6-14-16](#) )

### Sec. 66-213. - Minor encroachments.

- (a) Minor encroachments, in part because of their limited applicability and the fact that they apply only to private property abutting street rights-of-way, are unlikely to create much, if any, impact on the orderly and efficient use of the public street rights-of-way, particularly if done in accordance with clearly established requirements. Therefore, the city manager may grant an adjacent property owner a non-exclusive, revocable permit to encroach into street rights-of-way as necessary for the installation of parts of irrigation systems, fences and landscaping plants and materials. The manager may also consent to such encroachments into city access and utility easements, provided the adjacent property owner owns the underlying fee.
- (b) All applications for a permit for minor encroachment shall be in writing on such form as the city manager may require and shall be subject to and in accordance with this Article, except no performance bond or letter of credit shall be required.

( [Ord. No. 16-025, § 1, 6-14-16](#) )