

50 **Sec. 54-25. Purpose.** This article is adopted to promote the health, safety, and welfare of the citizens, to
51 decrease the distractions and obstructions on sidewalks and other public facilities, and to promote business activity.

52 Sec. 4. Revisions to section 54-26. Sec. 54-26 is amended by deleting the definitions of “include” and “right-of-
53 way parking area,” and adding these definitions:

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

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

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

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

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

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

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

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

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

93 Section 54-26 is amended by changing the definitions of “food,” “motor vehicle,” “sell,” and “vehicle” to read:

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

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

101 *Sale* is an offer, transfer, or agreement described in the definition to “sell.”

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

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

107 Sec. 5. Revision to section 54-88. Section 54-88 is revised to read:

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

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

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

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

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

123 Sec. 6. New section 54-91. The following section 54-91 is adopted:

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

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

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

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

141 (d) *Seating, tables, etc.* Sales gear shall not include seating for customers. Tables are allowed as sales gear
142 only when a wheeled cart or motor vehicle is also part of the sales gear. Sales gear shall not include tables or other
143 surfaces that are used by customers to consume or use purchases from sellers. Sales gear may include a maximum

144 of one seat for each salesperson. Sellers and salespersons shall not allow customers to use those seats, and
145 customers shall not use those seats. No sales gear may be placed in a manner that prohibits a motor vehicle from
146 safely using a public or private driveway to gain access to and from a street.

147 (e) *Minimum distances.* No sales gear may be placed in a manner that prohibits a motor vehicle from safely
148 using a public or private driveway to gain access to and from a street. All sales gear must be placed so as to allow at
149 least four feet of unobstructed space for pedestrians on sidewalks, on pedestrian paths, and on other locations
150 intended primarily for pedestrian travel. If applicable law, including Americans with Disability Act regulations,
151 requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200
152 feet of sales gear, there is no passing space for pedestrians that is at least five feet by five feet, sales gear must be
153 placed so as to allow at least five feet of unobstructed space for pedestrians. All sales gear must be at least 10 feet
154 from street intersections, crosswalks, bus shelters, taxi stands, building entrances and exits, fire stations, police
155 stations, and fire hydrants. All sales gear of one seller must be at least 10 feet from all sales gear of all other sellers
156 operating under this division, except that this sentence does not require a minimum distance between one motor
157 vehicle parked in an on-street parking space and another motor vehicle parked in an on-space parking space. A
158 street intersection is the point at which the edge of one street's roadway meets the edge of another street's roadway.
159 All sales gear must be at least 20 feet from any automated teller machine and from all entrance doors and exit doors
160 of banks, credit unions, and savings and loan associations. All sales gear must be outside of each area that is
161 described as follows:

162 Beginning at the post on which a bus stop sign is attached, and running against the direction of traffic,
163 along the edge of pavement a distance of 40 feet to a point; from that point, on the line that is perpendicular
164 to the roadway, a distance of 10 feet from the roadway; from that point, running with the direction of traffic
165 parallel with the edge of pavement a distance of 40 feet; from that point, on the line that is perpendicular to
166 the roadway, a distance of 10 feet to the post on which the bus stop sign is attached, the point of beginning.

167 (f) *Distance from restaurants.*

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

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

184 (3) For restaurants to which subsection (1) applies, this subsection (f) applies to the restaurant only while
185 (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food
186 prepared by the restaurant to eat while seated inside the restaurant, and (ii) the restaurant's kitchen is open and
187 staffed for the purpose of preparing food for customers to eat while seated inside the restaurant. For restaurants to
188 which subsection (2) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing
189 additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat
190 while seated inside the restaurant, while seated at a table in an outdoor dining area permitted pursuant to section 54-
191 110, or while seated at a table outdoors on private property, and (ii) the restaurant's kitchen is open and staffed for
192 the purpose of preparing food for customers to eat while seated inside the restaurant, while seated in an outdoor
193 dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property.

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

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

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

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

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

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

206 A *restaurant* is an establishment engaged in the business of preparing and serving meals at retail for pay. It
207 must have a kitchen and inside seating for at least 10 individuals to eat food provided by the restaurant. The
208 following are not included in determining seating capacity: (1) seats in a bar or lounge area; (2) seats in a separate
209 room or section used exclusively for private functions; and (3) outside seats. This definition of restaurant applies to
210 this subsection instead of any other definition of the word elsewhere in the city code.

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

219 (h) *Fire extinguishers.* No deep fat fryer, flat top grill, or any other equipment that can produce grease
220 vapors shall be used unless it is on a wheeled cart or motor vehicle. When sellers and salespersons use a deep fat
221 fryer, a flat top grill, or any other equipment that can produce grease vapors, they must have on the wheeled cart or
222 motor vehicle a minimum of 10 pounds-ABC type fire extinguisher. Sellers and salespersons shall immediately
223 prove compliance with this subsection upon the request of the city manager or any sworn law enforcement officer.

224 (i) *Reserved.*

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

230 (1) A moveable sign is a freestanding sign placed on a paved sidewalk and not attached directly or
231 indirectly to any public or private property. It shall not exceed 2.5 feet in width or 4 feet in height. As a
232 further limitation, no dimension of a moveable sign as placed in use on a sidewalk shall exceed 4 feet. The
233 entire moveable sign must be placed within 30 feet of the sales vehicle to which it is associated. A seller is
234 allowed to place one moveable sign per sales vehicle, but if one salesperson uses more than one sales
235 vehicle, no more than one moveable sign is allowed for all the sales vehicles used by that salesperson.
236 Moveable signs shall comply with the requirements of sales gear. Moveable signs must be kept in good
237 condition.

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

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

244 (l) *Reserved.*

245 (m) *Unattended sales gear.* Sellers and salespersons shall remove all sales gear from street right-of-way
246 when the sales gear is not attended by a responsible individual for longer than 10 minutes.

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

252 Sec. 7. Revisions to section 54-112.

253 Section 54-112 is revised by replacing "sections 54-107 or 54-109" with "section 54-91" in subsections (a) and (b).

254 Sec. 8. Addition of sections 54-114, 54-115, 54-116, 54-117, and 54-118. The following sections are added:

255 **Sec. 54-114. Sales on closed or blocked streets in conjunction with special-event permits.** Except to
256 the extent a special-event permit otherwise provides, no person other than the special-event permittee shall engage in
257 right-of-way sales activities on the portion of any street that is closed or blocked by an order issued pursuant to
258 section 66-430. Except to the extent a special-event permit otherwise provides, section 54-88(a) does not apply to
259 the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. Except to the extent
260 otherwise provided by the permit and subject to such terms and conditions as the city manager deems proper, the
261 permittee may create exceptions to the prohibition established by the first sentence of this section on the closed or
262 blocked street.

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

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

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

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

277 **Sec. 54-116. Exemption for newspaper distribution.** Except to the extent otherwise explicitly provided
278 by an order or permit referred to in section 54-114 or section 54-115, the orders and permits shall not be construed
279 to prohibit the distribution of newspapers within the nontraveled portion of any street. This rule of construction does
280 not apply to the extent the newspaper distribution activities impede the normal movement of traffic on the street.

281 **Sec. 54-117. Prohibitions cumulative.** Where any combinations of section 54-112, section 54-114, and
282 54-115, and/or subsections in those sections, apply, the conditions, prohibitions, and restrictions are cumulative
283 unless the context requires otherwise or unless otherwise provided in an applicable permit.

284 **Sec. 54-118. Right-of-way sales activities presumed subject to section 54-88.** Unless otherwise
285 provided, section 54-112, section 54-114, and 54-115 are subject to section 54-88 with respect to right-of-way sales
286 activities.

287 Division 4. APPLICATION AND DISPLAY OF PERMITS

288 Sec. 9. Revisions to sections 54-140, 54-141, 54-188, 54-189, 54-190 and 54-191. Section 54-140 through section
289 54-141, and section 54-188 through section 54-191 are revised to read as follows:

290 **Sec. 54-139. Permits to which division applies.** The permits referred to in section 54-114 and section 54-
291 115, including special-event permits, are deemed, for purposes of applying this division and division 5, to be
292 required by this article and issued under this article.

293 **Sec. 54-140. Display of permit.** All individuals conducting any activity for which a permit is required
294 under this article and all permittees shall (1) immediately show the permit upon request of the city manager or any
295 sworn law enforcement officer, and (2) prominently display the permit at all times while conducting any activity for
296 which a permit is required under this article so that the permit is easily seen and not covered and so that the text of
297 the permit can be read by the public without their having to ask to see it. The city manager may amend an already-
298 issued permit to impose, as additional conditions of the permit, additional requirements respecting the posting of
299 permits. Those amendments shall be effective on the fourth day after the notice of amendment is mailed to the
300 permittee's address as stated in the permit application.

301 **Sec. 54-141. Termination and revocation of permit; review of decisions.**

302 (a) *Termination; grounds and procedure for revocation.* The city manager may, at any time, terminate any
303 permit issued under this article and any special-event permit referred to in this article for reasons satisfactory to the
304 city manager. In addition, the city manager may revoke any such permit issued if:

- 305 (1) the city manager finds fraud, misrepresentation, or knowingly false statement with respect to a
306 material fact in the permit application;
- 307 (2) the city manager finds that the permittee or the permittee's agent or employee violated this article
308 or the terms of the permit;
- 309 (3) the city manager finds that the permittee or the permittee's agent or employee conducted an
310 activity for which the permit is required in such a manner as to create a public nuisance, cause of a
311 breach of the peace, violate any applicable Law, or interfere with the rights of abutting property
312 owners; or
- 313 (4) in the case of a permit issued under section 54-110, the city manager finds that the public safety or
314 convenience of pedestrians is not served by the permit.
- 315 (5) Reserved;
- 316 (6) Reserved;
- 317 (7) Reserved.

318 Except in case of emergency, before making the decision to terminate or revoke, the city manager shall
319 give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked pursuant to this
320 section even if the person making the findings pursuant to this section (the city manager or chief of police, as
321 applicable) had made a contrary finding before the permit was issued, regardless of whether the facts upon which the
322 finding is made had changed.

323 (b) *Notice.* The city manager shall cause a written notice of the revocation to be served on the permittee by
324 first-class mail to the address shown on the permit application or by any method allowed by law for service of a
325 summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or
326 older, including the city manager. The notice shall set forth a brief statement of the grounds for revocation and of
327 the right to appeal.

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

335 (d) *Review of decisions.* If the city manager denies the issuance of a permit, revokes a permit, issues a
336 permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with
337 respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the

338 office of the city manager within ten days of the date of the notice of decision. The city manager or a person
339 designated by the city manager for this purpose who is neither the person who made the decision complained of nor
340 that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision.
341 The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person
342 seeking review. The permittee and the city manager may appear in person or through counsel and may present
343 evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner
344 and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm,
345 deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a
346 review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of
347 review. The permit may be used during the review process only if the city manager determines that its use would
348 not constitute a substantial threat that the grounds described in subsection (a)(2), (a)(3), or (a)(4) will occur, re-
349 occur, or continue during the review process.

350 **DIVISION 5. - OTHER PROVISIONS**

351 **Sec. 54-188. Penalties for violations.**

352 (a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article,
353 including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation
354 and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a
355 summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or
356 older, including the city manager. The civil penalty shall be in an amount not to exceed \$300 per violation plus the
357 costs incurred by the city resulting from the violation, including costs of removing litter. In determining the amount
358 of the penalty, the city manager shall consider the degree and extent of harm that the person of the offender and the
359 person and property of others were exposed to or caused by the violation, the amount of money the offender saved
360 or made by the noncompliance, whether the violation was committed willfully, and the prior record of the offender
361 in complying or failing to comply with this article.

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

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

382 (d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of
383 motor vehicles, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a
384 maximum fine of \$500.

385 (e) *Reserved.*

386 (f) *Available remedies.* This article and the provisions of permits issued under this article may be enforced
387 by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing

388 from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as
389 may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an
390 adequate remedy at law. In applying section 1-9(e), the City Council intends that termination and revocation of a
391 permit be considered to be remedies.

392 **Sec. 54-189. Privilege license ordinance not affected; refund of privilege tax.** This article is separate
393 from the privilege license ordinance. Whether a privilege license tax is required does not affect whether an activity
394 is lawful under this article. However, if a privilege license tax is paid, and the only activity that the license permits
395 is entirely prohibited by this article for the entire time period for which the privilege license tax applies, the city
396 shall refund the privilege license tax paid.

397 **Sec. 54-190. Cumulative requirements.** No provisions of the City Code, except those explicitly repealed
398 or explicitly amended by the ordinance adopting this article, are repealed by this article. If any provision of this
399 article allows an activity to occur but another provision of the City Code regulates or prohibits it, the more
400 restrictive provision applies.

401 **Sec. 54-191. Reservation of rights in City; other ordinances and N. C. DOT not limited.**

402 (a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit
403 issued under this article shall promptly cease the activity and remove all property that the city deems to interfere
404 with the purposes for which the direction is given. The city reserves the right to require any activity allowed by this
405 article or by a permit issued under this article to cease in whole or in part, for any purpose, including:

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

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

409 (3) To remedy a nuisance; or

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

411 (b) To the extent directed by the city, any person allowed to do any activity by this article or by a permit
412 issued under this article shall promptly cease the activity and remove all property that the city deems to interfere
413 with the purposes for which the direction is given.

414 (c) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or
415 welfare, the city manager may, orally or in writing, order a seller or salesperson to immediately move such distance
416 as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency,
417 danger, detriment, or hazard. Upon receiving such order, the seller or salesperson shall comply. When such an
418 order is not complied with (including because the seller or salesperson is not readily found), the city manager may
419 cause objects in violation of the order to be removed, disposed of, or both, and the cost of such actions shall be
420 borne by the offender. This subsection shall not be construed to limit subsection (a).

421 (d) Nothing in this division shall be construed to limit any other ordinance, including section 38-22
422 (Parking in city parks), section 66-108 (Driving over curbs, gutters or sidewalks at places other than those
423 constructed and designed for traffic), section 66-109 (Driving on sidewalk), section 66-116 (Operation in public
424 parks), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of
425 the N. C. Department of Transportation over rights-of-way under its jurisdiction.

426 Sec. 10. Appeals regarding special-event permits. Subsections 66-431(b) – (c) are revised to read:

427 (b) The order and permit shall be granted or denied within a reasonable time after the filing of the
428 application. For provisions relating to issuance, appeals, termination, etc. of permits, see division 4 of chapter 54.
429 For provisions relating to penalties, see division 5 of chapter 54.

430 (c) Reserved.

431 Sec. 11. Addition of section 66-433. The following section is added:

432 **Sec. 66-433. Reservation of rights in City; other ordinances and N. C. DOT not limited.**

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

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

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

442 (3) To remedy a nuisance; or

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

444 (b) To the extent directed by the city, any person allowed to do any activity by this article or by a permit
445 issued under this article shall promptly cease the activity and remove all property that the city deems to interfere
446 with the purposes for which the direction is given.

447 (c) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or
448 welfare, the city manager may, orally or in writing, order a any person allowed to do any activity by this article or by
449 a permit issued under this article to immediately move such distance as the city manager specifies, and to cease acts
450 determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such
451 order, the individual shall comply. When such an order is not complied with, the city manager may cause objects in
452 violation of the order to be removed, disposed of, or both, and the cost of such actions shall be borne by the
453 offender. This subsection shall not be construed to limit subsection (a).

454 (d) Nothing in this division shall be construed to limit any other ordinance, including section 66-108
455 (Driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-
456 109 (Driving on sidewalk), and those imposing parking restrictions. Nothing in this division shall be construed to
457 limit the authority of the N. C. Department of Transportation over rights-of-way under its jurisdiction.

458 (e) The principle that the expression of one thing is the exclusion of another is not to be used to construe
459 this division to grant to the public any right to use property owned or controlled by the city.

460 Sec. 12. Long vehicles may occupy two spaces. City Code Sec. 66-176 is revised to read:

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

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

466 (b) *Long vehicles.* The driver shall stand or park the vehicle entirely within the lines marking the space,
467 except that a vehicle may occupy two spaces if it is too long to occupy one space, provided that this exception
468 applies only when the spaces are parallel with the edge of the roadway.
469
470

471 Sec. 13. Effective date. This ordinance shall be effective at 9:00 A.M. on the thirtieth day after it is
472 adopted. Special-event permits that were both issued before this ordinance is adopted and effective after this
473 ordinance is effective are void. Permits issued before the effective date of this ordinance under sections 54-107, 54-
474 108, and 54-109 are rescinded, and no refunds of permit fees paid by the permittees will be made, except that an
475 ordinance setting fees for registration pursuant to section 54-91(n) (Registration) may provide for reduction or
476 waiver of the registration fee in certain circumstances. The city manager may accept registrations before the
477 effective date of this ordinance, provided that the registrations take effect on the effective date.

478

479 [End of document]