

1 ORDINANCE TO ALLOW TEMPORARY USE OF STREET RIGHTS OF WAY
2 BY CONTRACTORS AND TO ALLOW PARKING FOR EXTENDED PERIODS
3 IN LIMITED TIME ZONE PARKING SPACES;
4 AND TO AMEND CITY CODE SECTION 66-345 TO PROVIDE FOR OFFICIAL
5 MAP BOOKS TO DEPICT WHERE THOSE PARKING ORDINANCES APPLY
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7 Section 1. Division 4 (Bus Stops and Taxicab Stands) of Article IV of Chapter 66 is re-
8 designated to be Division 5.
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10 Section 2. The following division is added to Article IV of Chapter 66 of the City Code.
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12 DIVISION 4. TEMPORARY USE OF STREET RIGHTS-OF-WAY BY CONTRACTORS
13 AND PARKING FOR EXTENDED PERIODS IN LIMITED TIME ZONE PARKING SPACES
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15 **Sec. 66-265. Definitions.**
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17 In this division, the following definitions apply unless the context clearly requires otherwise.
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19 *Contractor parking permit* means a permit issued pursuant to section 66-267.
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21 *Law* means law, statute, ordinance, rule, regulation, or decree or order of any governmental
22 entity.
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24 *On-street parking space* means a space designated by the city or the state for parking a
25 motor vehicle on a street right-of-way.
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27 *On-street parking space permit* means a permit issued pursuant to section 66-270.
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29 *Permit*, depending on the context, refers to any or all of the permits issued under this
30 division.
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32 *Street right-of-way* means the entire area in which the public, the city, or the state owns a
33 property interest, when a portion is open to the use of the public as a matter of right for any motor
34 vehicle traffic. The street right-of-way includes roadway, and may include right-of-way parking
35 area, sidewalk, median, and unpaved areas, including grassed area.
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37 *Temporary construction space* means a portion of the street right-of-way, including on-street
38 parking spaces, for which the city manager makes findings listed in section 66-267. The space
39 may include an area contiguous with an on-street parking space.
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41 *Time-limited parking space* means an on-street parking space in which parking a motor
42 vehicle is lawful for a specified period that is less than 24 hours. It includes on-street parking
43 spaces in which parking is limited by section 66-260 or by time zone parking restrictions that are
44 adopted pursuant to section 66-345 and entered on Traffic Schedule (5)(f) under that section.
45 Loading and unloading spaces are not time-limited parking spaces.
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47 **Sec. 66-266. Scope.**

 This division applies only to the streets marked on the map labeled “On-Street Parking
Program” and “Map prepared by Durham GIS on 5/7/2015.” Pursuant to section 66-345 the map
shall be codified by entry in an official map book, under category 1 (Streets Subject to Temporary
Use of Street Rights-of-Way by Contractors and Parking for Extended Periods in Limited Time
Zone Parking Spaces, pursuant to section 66-265 et seq.). The map itself and amendments that
may be made to it will not otherwise be placed in the city code.

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Sec. 66-267. Contractor parking permit.

The city manager may issue a contractor parking permit to allow the occupation of a temporary construction space by vehicles, fences, receptacles for solid waste, and other apparatus, supplies, material, and equipment, provided that the occupation of the space is connected with construction, maintenance, repair, servicing, or demolition, or for loading or unloading, or for moving. The city manager shall not issue a permit without finding that occupation of the space in accordance with the terms of the permit (i) is reasonably necessary for the project, (ii) can be done without interfering with the regular flow of motor vehicle traffic, and (iii) can be done without endangering or unduly inconveniencing persons or endangering property. Fees for permits shall be as set by the city council from time to time.

Sec. 66-268. Terms of permit.

The city manager shall specify in each permit any conditions that the city manager deems appropriate for the situation, including requiring the permittee to post and maintain signs, barricades, fencing, cones, lights, and other boundary or safety devices. The space shall be located where the city manager designates. On-street parking spaces may be included within the boundaries of the temporary construction space. The permit shall designate the boundaries of the space and may include vertical limitations. The permit shall expire when specified in the permit but in no event may a single permit remain effective longer than six months, provided that a new permit may be issued to continue after an existing permit expires, if the city manager finds that to be appropriate under section 66-267. Nothing in the permit shall be deemed to relieve the permittee from complying with applicable law or from complying with the appropriate standard of care. Complying with the permit is intended only to constitute a defense to a citation for violating limited time zone parking restrictions that are adopted pursuant to section 66-345 and entered on Traffic Schedule (5)(f) under that section, and not a defense to violation of other applicable law or the appropriate standard of care.

Sec. 66-269. Placing objects in parking spaces other than vehicles and sales gear.

No object shall be placed in an on-street parking space unless an individual remains in or near the space and immediately removes the thing from the space upon an indication that another individual intends to move a vehicle into the space. This section does not affect the placement of sales gear allowed by section 54-91(b). This section does not affect the standing or parking of vehicles.

Sec. 66-270. On-street parking space permits.

(a) *Standard permits.* The city manager may issue on-street parking space permits to allow a vehicle to be parked in a time-limited parking space without regard to the time limit, when the city manager determines such parking is needed for construction, maintenance, repair, servicing, demolition, loading, unloading, or moving. The permit shall designate one or more parking spaces where the permit applies. The permit shall expire when specified in the permit but in no event may a single permit remain effective longer than six months, provided that a new permit may be issued to continue after an existing permit expires, if the city manager finds that to be appropriate under the standards of this section. Fees for permits shall be as set by the city council from time to time.

98 (b) *Permits for utilities.* The city manager may issue on-street parking space permits to
99 allow a vehicle to be parked in a time-limited parking space without regard to the time limit, for
100 vehicles operated by or for companies that have the right to place wires, cables, or pipes in the
101 street right-of-way pursuant to a franchise ordinance or an easement from the City or the State,
102 but only for the time period when the vehicle is used for construction, maintenance, or repair.
103 The permit may, but need not, designate one or more specific parking spaces where the permit
104 applies. If the permit provides for its expiration upon the passage of time or by some other
105 measure, it expires accordingly, provided that a new permit may be issued to continue after an
106 existing permit expires, if the city manager finds that to be appropriate under the standards of this
107 section. Fees for permits shall be as set by the city council from time to time.
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109 **Sec. 66-271. Exemptions from limited time zone parking restrictions.**

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111 The following are exempt from limited time zone parking restrictions that are adopted
112 pursuant to section 66-345 and entered on Traffic Schedule (5)(f) under that section: (i) vehicles
113 parked by individuals attending a funeral, including the funeral director and his or her employees,
114 if the funeral is organized by a funeral director licensed pursuant to G.S. 90-210.25, during the
115 time period beginning one hour before the funeral is scheduled to begin, while the funeral is in
116 progress, and ending one hour after the funeral has ended; (ii) City vehicles while parked to
117 facilitate construction, maintenance, or repair of pipes, apparatus, and equipment used for the
118 supply or transmission of potable water; and (iii) vehicles parked by any of the following, while
119 engaged in the performance of their respective occupations: firefighting personnel, law
120 enforcement personnel, EMS personnel, health care workers or providers, civil preparedness
121 personnel, emergency management personnel, and emergency management workers (defined by
122 G. S. 166A-19.60(e)).
123

124 **Sec. 66-272. Suspension, termination, and revocation of permit; review of decisions.**

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126 (a) *Suspension, termination, and revocation.* The city manager may, at any time, suspend or
127 terminate a permit for reasons satisfactory to the city manager. Without limiting the preceding
128 sentence, the city manager may suspend or terminate a permit --

- 129 (1) To allow for construction, maintenance, or repair of any street, sidewalk, utility, building,
130 or facility;
131 (2) To allow for use of a public street, sidewalk, utility, building, or facility in connection
132 with parades, festivals, or other events;
133 (3) To remedy a nuisance; or
134 (4) To protect or promote the public health, safety, or welfare.
135

136 (b) *Revocation.* The city manager may revoke a permit if:

- 137 (1) The city manager finds fraud, misrepresentation, or knowingly false statement with
138 respect to a material fact in the permit application;
139 (2) The city manager finds that the permittee or the permittee's agent or employee violated
140 this division or the terms of the permit;
141 (3) The city manager finds that the permittee or the permittee's agent or employee conducted
142 an activity for which the permit is required in such a manner as to create a public nuisance,
143 cause of a breach of the peace, violate any applicable law, or interfere with the rights of
144 abutting property owners; or
145 (4) The city manager finds that the public safety or convenience of pedestrians is not served
146 by the permit.

147 Except in case of emergency or insufficient time, before making the decision to suspend,
148 terminate, or revoke, the city manager shall give reasonable notice to the permittee and an

149 opportunity to be heard. If because of emergency or insufficient time, the decision is made
150 without giving reasonable notice and an opportunity to be heard, notice and an opportunity to be
151 heard shall be given promptly. A permit may be revoked pursuant to this section even if the
152 person making the findings pursuant to this section (the city manager or chief of police, as
153 applicable) had made a contrary finding before the permit was issued, regardless of whether the
154 facts upon which the finding is made had changed.

155
156 (b) *Notice.* The city manager shall cause a written notice of the suspension, termination, or
157 revocation to be served on the permittee by first-class mail to the address shown on the permit
158 application or by any method allowed by law for service of a summons in a civil action, provided
159 that the person delivering the notice may be any person who is 18 years or older, including the
160 city manager. The notice shall set forth a brief statement of the grounds for the action and of the
161 right to appeal.

162
163 (c) *Retention of fees; waiting period.* If the city suspends, terminates, or revokes a permit, the
164 city shall retain the fee paid for the permit. However, when a permit is suspended or terminated
165 entirely for reasons other than wrongful conduct or fault of the permittee or those for which the
166 permittee is responsible, such as by use of the authority under section 66-272(a)(1)-(2), fees paid
167 in advance at a daily rate will be refunded to the extent advance payments are for three or more
168 days. The person whose permit is revoked for grounds stated in subsection (a)(1) or (a)(2),
169 regardless of whether additional grounds existed, shall not be issued a permit under the same
170 section of this division for the remainder of the time for which the revoked permit had been
171 issued or 30 days after the date of the revocation, whichever time period is longer. The city
172 manager shall use reasonable judgment in deciding whether two applicants are the same so that,
173 for example, technical changes in the applicant, or where the applicant one year is the wife and
174 the next year it is the husband, may be disregarded.

175
176 (d) *Review of decisions.* If the city manager suspends, terminates, or revokes a permit, the
177 permittee may have that decision reviewed by filing a written request in the office of the city
178 manager within ten days of the date of the notice of decision. The city manager or a person
179 designated by the city manager for this purpose who is neither the person who made the decision
180 complained of nor that person's subordinate, shall be named as the hearing officer to conduct a
181 hearing in order to review the decision. The city manager shall cause a written notice of the time
182 and place of the hearing to be given or sent to the person seeking review. The permittee and the
183 city manager may appear in person or through counsel and may present evidence, provided,
184 however, that the hearing officer shall have the authority to conduct the hearing in the manner
185 and for the period of time that he or she deems appropriate to make a decision. The hearing
186 officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision
187 shall be final. Failure to request a review within the time and in the manner provided for in this
188 subsection shall constitute a waiver of the right of review. The permit may be used during the
189 review process only if the city manager determines that its use would not constitute a substantial
190 threat that the grounds described in subsection (a)(2), (a)(3), or (a)(4) will occur, re-occur, or
191 continue during the review process.

192
193 **Sec. 66-273. Removal of vehicles and other objects.**

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195 (a) *Right of city to remove.* The city manager may cause to be removed any vehicle or other
196 object from a temporary construction space or time-limited parking space when (i) a permit
197 allowing the space to be occupied has been suspended, terminated, or revoked (whether or not the
198 action is subject to review), (ii) the vehicle or other object in the temporary construction space or
199 time-limited parking space violates the terms of a permit or this division, or impedes the regular

200 flow of motor vehicle traffic, or (iii) the vehicle or other object in the temporary construction
201 space or time-limited parking space endangers property or endangers or unduly inconveniences a
202 person. The removal shall be to a garage or other location or facility designated by the city
203 manager.

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205 *(b) Duty of permittee to remove.* (a) To the extent directed by the city, when a permit issued
206 pursuant to this division is suspended, terminated, or revoked, any person allowed to do any
207 activity by the permit, whether or not the permit remains valid, shall promptly cease the activity
208 and remove all property that the city deems to interfere with the purposes for which the direction
209 is given.

210

211 **Sec. 66-274. Penalties for violations.**

212

213 *(a) Assessment of civil penalties.* The city manager shall assess civil penalties for violation of
214 this division, including the terms of a permit. The city manager shall give the offender written
215 notice of the nature of the violation and the amount of the civil penalty. The notice shall be
216 served by any method allowed by law for service of a summons in a civil action, provided that the
217 person delivering the notice may be any person who is 18 years or older, including the city
218 manager. The civil penalty shall be in an amount \$100.00 per violation plus the costs incurred by
219 the city resulting from the violation, including costs of removing litter.

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

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

246

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

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

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259 **Sec. 66-275. Other ordinances and N.C. DOT not limited.**
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261 Nothing in this division shall be construed to limit any provision of the City Code outside
262 this division, including section 66-108 (driving over curbs, gutters or sidewalks at places other
263 than those constructed and designed for traffic) and section 66-109 (driving on sidewalk).
264 Nothing in this division shall be construed to limit the authority of the N.C. Department of
265 Transportation over rights-of-way under its jurisdiction.
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267 **Section 3. TO AMEND CITY CODE SECTION 66-345 TO PROVIDE FOR OFFICIAL**
268 **MAP BOOKS TO DEPICT WHERE THOSE PARKING ORDINANCES APPLY**
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270 Section 66-345 (Traffic control and regulation schedule) is amended as follows:
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- 272 i. The title is revised to read: “Traffic control and regulation schedule; official map books
273 for certain parking regulations.”
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- 275 ii. The current contents are labeled subsection (a).
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- 277 iii. The following new subsection (b) is added after the end of the Traffic Schedule:
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279 (b) Maps designating areas and zones where regulations are applied to the following
280 types of parking ordinances shall be codified by entries upon official map books to be
281 retained by the city clerk, pursuant to G.S. 160A-77(b)(3):
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283 **OFFICIAL MAP BOOKS**
284

- 285 (1) Streets Subject to Temporary Use of Street Rights-of-Way by Contractors and
286 Parking for Extended Periods in Limited Time Zone Parking Spaces, pursuant
287 to section 66-265 et seq.
- 288 (2) Controlled Parking Residential Areas, pursuant to section 66-254 et seq.
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290 **Section 4.** This ordinance is effective beginning July 1, 2015.
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