

ORDINANCE TO REVISE THE TEMPORARY STREET CLOSING PROCEDURES,
TO REVISE PROHIBITIONS ON OBSTRUCTING AND IMPEDING PEDESTRIAN AND
VEHICULAR TRAVEL ON SIDEWALKS,
AND TO SET A FIXED CIVIL PENALTY FOR VIOLATION OF ARTICLE II
(SALES AND SOLICITATIONS IN THE STREET RIGHT-OF-WAY) OF ARTICLE 54 OF
THE CITY CODE

THE CITY COUNCIL OF THE CITY OF DURHAM ORDAINS:

SECTION 1. City Code Section 66-7 (Parades and processions—Permit) is repealed.

SECTION 2. Subsection (a) of Section 54-141 (Termination and revocation of permit; review of decisions) is revised to read:

(a) *Termination; grounds and procedure for revocation.* The city manager may, at any time, terminate any permit issued under this article and any special-event permit referred to in this article, excluding permits issued pursuant to section 66-430 and excluding permits issued solely to allow First Amendment protected sales, for reasons satisfactory to the city manager. In addition, the city manager may revoke any permit issued under this article and any special-event permit referred to in this article, excluding permits issued pursuant to section 66-430, if:

- (1) The city manager finds fraud, misrepresentation, or knowingly false statement with respect to a material fact in the permit application;
- (2) The city manager finds that the permittee or the permittee's agent or employee violated this article or the terms of the permit;
- (3) The city manager finds that the permittee or the permittee's agent or employee conducted an activity for which the permit is required in such a manner as to create a public nuisance, cause of a breach of the peace, violate any applicable Law, or interfere with the rights of abutting property owners.

Without limiting the foregoing provisions of this section, the city manager may revoke a permit issued under section 54-110 upon finding that the public safety or the convenience of pedestrians is not served by the permit, and the city manager may revoke a permit issued under this article solely to allow First Amendment protected sales upon finding that the public safety is not served by the permit.

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

SECTION 3. City Code Section 62-10 is revised to read:

City Code Section 62-10 (Impeding flow of travel)

(a) It is unlawful to impede the regular flow of travel on a sidewalk in such a manner as to block a pedestrian's or motor vehicle's attempted passage into or out of a driveway, without leaving a safe and adequate alternative route into or out of the driveway. Consent to such blocking given by an owner, tenant, lawful occupant, or person in control of the property to which the driveway leads is an affirmative defense.

(b) It is unlawful to impede the regular flow of travel on a sidewalk in such a manner as to block a pedestrian's or motor vehicle's attempted passage into or out of an entrance or exit of any residence, business, or public facility, without leaving a safe and adequate alternative route into or out of the entrance or exit. Consent to such blocking given by an owner, tenant, lawful occupant, or person in control of the residence, business, or public facility is an affirmative defense.

(c) This section does not apply to acts to the extent they are allowed by, and done in conformity with, a permit issued by a governmental person.

(d) This section does not affect other sections of the City Code, including section 66-108 and 66-109.

SECTION 4. Article VII of Chapter 66 of the City Code, being Section 66-429 through Section 66-433, is repealed. The following, consisting of Section 66-429 through Section 66-437, is enacted as Article VII of Chapter 66 of the City Code:

ARTICLE VII. – TEMPORARY STREET CLOSINGS

Sec. 66-429. - Definitions.

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

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

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

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

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

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

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

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

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

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

(1) The proposed street closing and the proposed use of the closed street will not unreasonably interfere with the normal activities of surrounding residents, businesses, or institutions.

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

(b)

(i) With the advice of the city attorney, the city manager shall establish rules setting reasonable periods of time to respond to applications. Rules, including revisions, established under this subsection shall include a statement that the City Attorney was consulted in writing the rules. When the city manager neither explicitly denies nor grants an application within 30 days after receiving it, the city manager shall be deemed to have denied the application on all grounds on the thirtieth day. The city manager's time periods shall include a provision requiring an expedited review and decision either (a) when the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, or (b) when an applicant shows compelling reasons for a shortened review period. When the city manager neither explicitly denies nor grants an application within such expedited review period, the city manager shall be deemed to have denied the application on all grounds on the last day of the review period.

(ii) *Interim rules for the expedited review and decision period.* Until the city manager establishes rules that provide otherwise, this subsection (ii) applies. When the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, or when an applicant shows compelling reasons for a shortened review period, the application shall be submitted to the City at least 48 hours, excluding weekends and holidays, before the proposed event. When the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity, and the city manager is confident that adequate preparations can be made -- acting reasonably, without extraordinary actions, and without endangering public safety and property -- in less than 48 hours, excluding weekends and holidays, before the proposed event, the city manager will shorten that 48-hour period accordingly. When the city manager neither explicitly denies nor grants an application within a time period provided for it by this subsection (ii), the city manager shall be deemed to have denied the application on all grounds at the end of that time period.

(c) Except in the instance of a denial deemed to occur pursuant to subsection (b), the city manager shall specify the grounds for denial from the following:

- (1) The application is not complete;
- (2) The applicant has not tendered the required indemnification agreements, insurance certificates, and security deposits within times prescribed;
- (3) The application contains a material falsehood, misstatement of fact, or misrepresentation;
- (4) The applicant is legally incompetent to contract or to be sued;
- (5) The applicant has on prior occasions made a material misrepresentation in any transaction with the City to the extent that a reasonable person would have reason to question the truth of statements made in or in connection with the application for a street closing or a special event;
- (6) The applicant has previously violated or allowed a violation of a street closing or special-event permit to the extent that a reasonable person would have reason to question whether the applicant will comply with the requested permit;
- (7) The proposed use would conflict with a use that the City has already planned or approved;
- (8) The proposed event would present an unreasonable danger to the public health or safety;
- (9) The proposed event is likely to substantially or unnecessarily interfere with traffic;
- (10) A reasonable alternative location, time, or date is available that would substantially better accommodate the needs and uses of the general public than the proposed location, time, or date (alternative location and time includes closing none or a smaller portion of a street and a shorter time period);
- (12) The event is likely to interfere with the movement of emergency equipment and personnel and police protection;
- (13) There is a substantial risk that insufficient law enforcement and traffic control officers would be available to adequately protect participants and non-participants from traffic-related hazards in light of the other demands for police protection;
- (14) The use or activity intended by the applicant is prohibited by law;
- (15) For all activities that are not First Amendment protected activities, the city manager shall consider these additional criteria. More positive findings on these additional criteria can allow for a street closing, or a larger street closing, while more negative findings will tend to support no street closing, a different day or time, or a smaller street closing.
 - i. The cultural and educational significance of the event;
 - ii. The extent to which the event contributes to the economic revitalization and business development of the city;
 - iii. The effect on, and cost of the event to, city support services;
 - iv. The effect of the event on the public health, safety and welfare;
 - v. The effect of the event on business and resident populations near the proposed event site;
 - vi. The evaluation of any previous event produced by the event organizer with regard to planning, quality, and public safety;
 - vii. The frequency and timing of the event or similar events.

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

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

Sec. 66-433. - Interference.

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Notice.* (i) The city manager shall cause a written notice of the revocation to be served on the permittee by first-class mail, email or other electronic means, or fax, to the address or number shown on the permit application, or by any method allowed by law for service of a summons in a civil action. The person serving the notice may be any person who is 18 years or older, including the city manager. (ii) If the city manager finds that time before a proposed hearing is insufficient to allow service in accordance with subsection (i), the city manager may, as an alternative to the means listed in subsection (i), notify the permittee by telephone of the grounds for revocation and of the right to appeal, provided a written notice is also sent in accordance with subsection (i) on or before the next day that is not a holiday. (iii) The notice described in subsection (i) shall set forth a brief statement of the grounds for revocation and of the right to appeal. (iv) The city manager shall see that a written record is made to show compliance with this section (b).

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

(d) *Review of decisions.*

- (i) If the city manager denies the issuance of a permit, revokes a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the city manager within ten days of the date of the notice of decision. The city manager or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's

subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The city manager shall expedite the review process when the proposed use of the closed street or sidewalk is solely for a First Amendment protected activity or the person seeking review shows compelling reasons for a shortened review period. The failure of the hearing officer to set a hearing within 15 days of the filing of the written request for review, or to deliver a decision within 10 days after the hearing, or within any shortened periods set by the city manager, shall be deemed a denial of the relief sought and affirmance of the action for which review was sought. The permittee and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the city manager determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2) or (a)(3) will occur, re-occur, or continue during the review process.

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

(e) *Certiorari.*

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

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

Sec. 66-436. - Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the

nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

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

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

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

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

Sec. 66-437. - Cumulative requirements.

No provisions of the City Code, except those explicitly repealed or explicitly amended by the ordinance adopting this article, are repealed by this article. If any provision of this article allows an activity to occur but another provision of the City Code regulates or prohibits it, the more restrictive provision applies.

SECTION 5. Subsection (a) of Section 54-188 (Penalties for violations) is revised to read:

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be ~~in an amount not to exceed \$300.00~~ \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter. ~~In determining the amount of the penalty, the city manager shall consider the degree and extent of harm that the person of the offender and the person and property of others were exposed to or caused by the violation, the amount of money the offender saved or made by the noncompliance, whether the violation was committed willfully, and the prior record of the offender in complying or failing to comply with this article.~~

SECTION 6. This ordinance is effective when enacted.