

**PROPOSED ORDINANCE
TOWN OF RUTHERFORDTON
REGULATION OF USE OF PUBLIC SIDEWALKS
PART VI, ARTICLE D**

Section 6-3001 Public sidewalks.

3001.1 – This Article shall be applicable to all public sidewalks within the Town of Rutherfordton. All sidewalks within the right of way, express or implied, of public roadways shall presumptively be considered public sidewalks. All sidewalks previously constructed by, or dedicated for public use to, the town shall presumptively be considered public sidewalks and the area upon which they are constructed shall be subject to such easement and right of way as shall be sufficient for the town to repair, construct, and replace such sidewalk.

3001.2 – Any area lying between public roadways and public sidewalks lie within the sidewalk easement and right of way and are subject to the regulation of public sidewalks. Any vegetation, or other covering such as decorative pavers, on such area shall not exceed six (6) inches in height. This prohibition shall not apply to uses of such area in violation of this Section 3001.2 as of the time of adoption of this ordinance, but such uses may be otherwise prohibited by local, state, or federal regulations.

3001.3 – As the context requires, the definition of public sidewalks shall include that public park and walkway area lying between North Main Street and Central Street along that area previously known as West First Street.

Section 6-3002 Structures, merchandise, equipment, or other objects on sidewalks.

3002.1 – Except as may be specifically otherwise provided in this Article, no structures, merchandise, equipment, or other objects of any kind may be placed on or upon public sidewalks except as specifically permitted by the town as set forth in a duly executed encroachment agreement.

3002.2 – This prohibition shall not apply to loading, unloading, moving, or transportation of such merchandise, equipment, or other objects.

3002.3 – This prohibition shall not apply to solid waste garbage cans and recycling containers approved or issued by the town when placed on the public sidewalks at times and in specific areas designated by the director of public works. This prohibition shall also not apply to tree trimmings, grass, leaves, and similar materials when placed on or near public sidewalks in accordance with this Code and policies adopted by the Town.

Section 6-3003 Encroachment agreements.

3003.1 – It is the policy of the Town of Rutherfordton that encroachment agreements upon public sidewalks shall be limited and that encroachment agreements shall be granted only for the beautification of the town or for the reasonable benefit and use of pedestrians.

3003.2 – The procedure for obtaining an encroachment agreement authorizing a structure, merchandise, equipment, or object on a public sidewalk or other public place shall be as follows:

- (1) Written application shall be made to the town manager or her/his designee. If the ap-

plication pertains to a sidewalk and not to a public park as defined in Section 3001.3, it shall be signed by all owners and lessees of the property located immediately adjacent to the sidewalk upon which the encroachment shall be placed.

- (2) The application shall state the reason for the encroachment.
- (3) The town manager or her/his designee may execute an encroachment agreement with property owners (and lessees, where applicable) only if the encroachment can be allowed without detriment to the health, safety, and welfare of the general public. In determining what constitutes detriment to the health, safety, and welfare of the general public, the following factors, among others not specifically enumerated, shall be considered:
 - (a) The location, type, and size of the encroaching structure(s) or merchandise.
 - (b) Whether the encroaching structure(s) or merchandise will unreasonably interfere with pedestrian or vehicular passage or safety.
 - (c) Whether the encroaching structure(s) or merchandise will interfere with an existing water or wastewater line, storm water facility, or other utility.
- (4) The town manager or her/his designee shall set forth in writing the reason for granting or denying an encroachment pursuant to this division.
- (5) The terms of the encroachment agreement shall be:
 - (a) The agreement may be terminated upon ninety (90) days notice from the town manager or her/his designee.
 - (b) The agreement shall also be subject to termination upon ten (10) days notice at such time as the town manager or her/his designee may deem the encroachment, including activities associated with the encroachment, to create a safety hazard to pedestrians or vehicular traffic or other safety hazard or a public nuisance or otherwise not be in keeping with the health, safety, and welfare of the general public.
 - (c) The owner (and lessee, where applicable) obtaining the encroachment agreement shall agree that, upon such termination, if the owner (or lessee, where applicable) shall fail to remove the encroachment within thirty (30) days following the giving of the notice by the town in accordance with subsection (a) of this section or within five (5) days of the giving of notice by the town in accordance with subsection (b) of this section, the town shall be authorized to remove the encroaching structure and recover all costs associated therewith from the property owner.
 - (d) The property owner (and lessee, if applicable) shall agree to indemnify and hold harmless the town from any and all liability that may arise by virtue of the encroachment, including, but not limited to, compliance with the Americans with Disabilities Act, the North Carolina State Building Code, and all other health and safety laws and regulations.
 - (e) If the property is sold or, where applicable, if the lease is terminated after execution of the encroachment agreement, the encroachment agreement shall be null and void and a new encroachment agreement with the new property owner and, where applicable,

with the lessee, shall be required prior to the encroachment being permitted to continue.

Section 6-3004 Community events and festivals.

3004.1 – Notwithstanding the provisions of this chapter to the contrary, the town manager is hereby authorized to permit certain types of community events or festivals to take place upon the public streets and sidewalks of the town.

3004.2 – The sponsor of the event or festival shall submit to the town manager a written application for a permit prior to the opening of the community event or festival for which a permit is desired. Such application shall be submitted no less than seven (7) days prior to the opening of any festival and no less than thirty (30) days prior to the opening of any festival for which the closing of roadways is requested. The application shall state:

- (1) The time, date, and location of the festival or event;
- (2) The group, firm, or individual by whom the event will be sponsored;
- (3) The purpose of the festival or event; and
- (4) The activities that will be included.

3004.3 – In granting permits for community events and festivals, the town manager shall consider the following:

- (1) The nature of the event or festival and how it can serve the community of the town and its citizens;
- (2) The time period during which the event or festival will occur;
- (3) The location of the event or festival and whether the location inhibits the safe flow of traffic in the town;
- (4) Whether the activities would be in compliance with other applicable laws;
- (5) Whether the event or festival is to benefit nonprofit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the town manager that the event or festival constitutes a community service; and
- (6) The general health, safety, and welfare of the participants in the event or festival and the citizens of the town.

3004.4 – The terms of the permit shall take into consideration the costs of the Town in connection therewith, including the costs of cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival. The permit may provide that the sponsor be responsible for payment to the Town of the costs incurred or to be incurred by the Town in connection with the event and may also provide for the assumption of certain responsibilities by the event sponsor, such as clean-

ing, as determined by the manager. Such payment of costs shall not apply to Town sponsored events.

3004.5 – The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival.

Section 6-3005 Awnings, overhangs, signage.

3005.1 – No awning, overhang, or signage, including supporting structures thereof, may be located in or over the traveled portion of any public right of way, including sidewalks, unless attached to a structural element of the building and an encroachment agreement has been obtained from the town in accordance with Section 6-3003, above.

3005.2 – In addition to all other requirements as may be necessary for consideration of an encroachment permit, no portion of any awning, overhang, or signage shall be less than seven (7) feet above the surface of the sidewalk.

Section 6-3006 Bicycles, Skateboards, and Similar Apparatus on Sidewalks.

3006.1 – No person shall ride or operate a bicycle, skateboard, scooter, skates, or similar apparatus upon the sidewalks within the central business district as set forth in the Unified Development Ordinance as the same is amended from time to time.

3006.2 – In addition, no person shall ride or operate a bicycle, skateboard, scooter, skates, or similar apparatus upon the following sidewalks:

- The full length of the sidewalk on the north side of Charlotte Road from U.S. Highway 221 to the U.S. Highway 74 Bypass.

3006.3 – Riding and operating bicycles, skateboards, scooters, skates, and other similar apparatus are subject to other provisions of this Code and policies of the Town.

Section 6-3007 Central business (C-1) district.

3007.1 – The central business district as used herein shall be defined as set forth in the Unified Development Ordinance as the same is amended from time to time.

3007.2 – It is acknowledged that use of public spaces within the central business district significantly affects the image of the town and determines whether the central business district is conducive for the conduct of businesses therein and the use and enjoyment of the public. To this end, this ordinance specifically regulates the conditions under which encroachment agreements may be granted for such central business district.

3007.3 – It is the policy of the town to strictly limit encroachments on the public sidewalks in the central business district. Encroachment permits shall not be considered for any type of vending machine, newspaper rack, or similar device, whether dispensed at a charge or for free, within the central business district.

3007.4 – The town reserves the right and privilege to place planters, seating areas, and decorative objects upon the public sidewalks in the central business district. Encroachment agreements with property owners will be considered for planters, seating, and other objects consistent with the planters and seating

areas maintained upon such public sidewalks by the town.

3007.5 – Merchandise and structures or devices holding or displaying the same may be allowed on the sidewalks in the central business district only upon the execution of an encroachment agreement as provided by Section 6-3003, above. In the event such an encroachment agreement is issued, the following restrictions shall apply:

- (1) Merchandise and the fixtures or devices on which they are displayed shall be located so that a minimum of three (3) feet of passage for pedestrian traffic shall be provided at all times.
- (2) No fixtures or devices on which outdoor merchandise is displayed shall be attached to the sidewalk without the specific permission of the town in the encroachment agreement.
- (3) Outdoor merchandise display areas will be permitted only adjacent to the building or structure in which the retail business is located. Outdoor merchandise areas shall not be permitted next to the curb of the street or in the middle of such sidewalks without allowing such minimum clearance for passage of pedestrian traffic as above provided. (Note: This section shall apply to display of merchandise. Sale of merchandise on Town sidewalks are governed by other regulations of the Town.)
- (4) Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks, or intersections.
- (5) All merchandise located within an outdoor merchandise area shall be placed so that the merchandise and the fixtures or devices on which the merchandise is displayed are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public.
- (6) All displays of merchandise must be of sufficient size, height, and position so that safe pedestrian traffic is not impeded.
- (7) Generally, encroachment permits shall provide that all merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the retail business is located during the hours the retail business is not operated. However, encroachment permits may allow the display of merchandise and the use of such fixtures or devices during the hours the retail business is not operating, including overnight, on a seasonal basis.
- (8) All merchandise and the fixtures or devices on which the merchandise is displayed must be secured so that it may not be dislodged during windy or stormy weather prior to being moved inside the building or structure wherein the retail business is located.
- (9) All such merchandise, fixtures, and devices shall be removed from the sidewalk when directed to do so by a law enforcement officer, fire official, or emergency medical personnel in the event of an emergency or a situation in which exigent circumstances arise.
- (10) The permit holder for the outdoor merchandise area shall be responsible for the maintenance, upkeep, and security of the fixtures or devices on which the merchandise is displayed and the town shall not have any responsibility for the same.

(11) The permit holder shall be responsible for keeping the outdoor merchandise area clean of garbage, trash, paper, cups, cans, or litter associated with the operation of the outdoor merchandise area.

Section 6-3008 Spaces under sidewalks.

3008.1 – No person, firm, or corporation shall use or appropriate any space under a sidewalk for a cellar or other underground uses without first obtaining a permit from the town council, which permit shall be revocable at the will of the council with or without notice. In the event council shall grant such a permit, the permit holder must agree to indemnify and hold harmless the town from any and all liability which may arise out of or in connection with the use of such space under the sidewalk by the permit holder. The permit holder shall also provide such other insurance coverage as shall be required by such permit.

3008.2 – In the event such a permit is granted, the permit holder shall be responsible for such modifications as shall be necessary to make the sidewalk over any underground space of such construction so as to permit travel over the same by pedestrians free from danger.