

# Ordinance 23-1217

Town of Carolina Beach  
Town Council



AN ORDINANCE TO AMEND CHAPTER 34 ARTICLE III. OBSTRUCTIONS AND THE TOWN RATES AND FEE SCHEDULE

## **ARTICLE III. OBSTRUCTIONS**

### **Sec. 34-61. Assembly on streets or sidewalks.**

All persons assembling and loitering upon the streets or sidewalks of the town in sufficient number or in such a manner as to be an obstruction to the streets and sidewalks or crossings, or an annoyance to persons engaged in business enterprises, shall disperse when ordered to by any police officer.

(Code 1977, § 6-2001; Code 1986, § 15-36; Ord. No. 80-08, § 6-2001, 3-11-1980)

State law reference(s)—Failure to disperse when commanded, G.S. 14-288.5.

### **Sec. 34-62. Purpose, goals, and applicability.**

- (a) *Purpose.* The regulations in this article are designed to create an active, accessible, and vibrant urban and mixed use environment. In doing so, it also recognizes the inherent relationship between the vitality of private property and the increased economic and pedestrian activities of the street. The public right of way houses many transportation activities, including walking, bicycling, transit, freight movement and automobile travel. It harbors the hardware, such as traffic signals and street lights, which supports those activities. The right-of-way also contains utilities. Each of these functions has specific design needs and constraints. The variety of functions is administered by people in several agencies, both inside and outside the town. The pedestrian environment should be a place where public activities are encouraged. [Temporary](#) Commercial activities such as dining, displaying merchandise, and advertising may be permitted when they do not interfere with safety and accessibility.
- (b) *Goals.* The goals of this article are:
  - (1) To apply fair and equitable regulations in granting the privilege of using commercial public spaces for private use.

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- (2) To assure a safe and comfortable street-level environment.
  - (3) To promote economic and pedestrian activities in commercial zoning districts.
  - (4) To establish maintenance standards and responsibilities when public space is used for private purposes.
  - (5) To enhance the appearance and design of streets, sidewalks and other public spaces.
  - (6) To provide a one-stop shop for obtaining permits for use of public rights-of-way spaces.
  - (7) To encourage diverse street-level activity.
  - (8) To make it convenient to do business in public spaces.
  - (9) To continue to encourage and promote public activities in rights-of-way while allowing for commercial activities only when they do not interfere with safety and accessibility.
- (c) *Applicability.* Except as hereinafter provided, it shall be unlawful for any person to obstruct entirely or in part any sidewalk, street, or other public way within the jurisdictional limits of the town by the selling or offering for sale at auction or otherwise any goods, wares or merchandise thereon, or to use any sidewalk, street, or otherwise any goods, wares or merchandise thereon, or to use any sidewalk, street or other public right-of-way for the placing thereon of any materials or substance, except where expressly permitted by the provisions of this Code or other ordinance of the town, or to use any sidewalk, street or other public right-of-way for the display or placing of merchandise or any other goods or commodity thereon.

(Ord. No. 16-1030 , 10-11-2016)

## **Sec. 34-63. Maintenance liability.**

Any private party receiving a permit for use of public space assumes responsibility for maintaining the spaces used by that activity. Areas must be kept clean and free of obstructions that impede pedestrian movement. The permit holder is liable for all damages and repairs to the streetscape, trees and vegetation, sidewalks, streets, or other public amenities that directly relate to the use of the permitted space. The permit holder is also responsible for the temporary removal of private materials or accessories from the permitted space for specific maintenance services deemed necessary by the responsible town department, division, or agency.

## **Sec. 34-64. Definitions.**

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

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*Boardwalk* means rights-of-way east of Woody Hewett/Canal, and from the north side of Harper Avenue up to and including Cape Fear Boulevard. All boardwalks operate as pedestrian walkways.

*Buffer zone* means an area on a sidewalk or boardwalk typically having obstructions that may prevent accessibility (i.e., planters on boardwalks or car overhangs on sidewalks).

*Canopy* means a fixed, permanent, or retractable ~~fabric cover~~ [obstruction](#) that is attached to the wall of a building and that projects over an entrance or window into public space.

*Eating and/or drinking establishments.* These establishments are defined in chapter 40, zoning.

*Encroachment* means the use, placement, or extension of private uses into, upon, over, or under public space or publicly-owned property.

~~*Established businesses* means businesses housed within a building or a permanent immobile structure, with frontage on the public right-of-way.~~

*Establishment operator* means the person, firm, or corporation operating a business with an encroachment.

*Merchandise* means items offered for retail sales including, but not limited, to plants, flowers, clothing, jewelry, ornaments, art work, food or beverages, or other goods or wares.

*Obstruction.* Anything located in public space ~~that inhibits accessibility.~~

*Oceanfront Boardwalk* means the easternmost right-of-way area that is adjacent to the town's boardwalk.

*Public space* means an interest in land to the town which provides for the perpetual right and privilege of the town, its agents, franchise holders, successors, and assigns to construct, install, improve, reconstruct, remove, replace, inspect, repair, maintain, and use a public street, including related and customary uses of street rights-of-way such as sidewalks, bike paths, landscaping, mass transit facilities, traffic control devices and signage, sanitary sewer, stormwater drainage, water supply, cable television, electric power, gas, and telephone transmission and related purposes in, upon, over, below, and across the rights-of-way. The town is authorized to remove, and keep removed from the rights-of-way all trees, vegetation, and other obstructions as is determined to be necessary by the town to maintain, repair, and protect facilities located in the realm.

*Sidewalk* means a public area that accommodates pedestrian travel and is adjacent to a street designed for vehicular travel.

*Sidewalk café* means ~~an encroachment located in public space~~ [a portion of a public sidewalk, pedestrian walkway, or public right-of-way used as an extension of an eating or drinking establishment to which it is adjacent.](#)

*Street* means a paved area of the vehicular roadway measured.

(Ord. No. 16-1030 , 10-11-2016; Ord. No. 18-1083, 4-10-2018)

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## Sec. 34-65. Permitting requirements.

- (a) *Application.* Any business establishment desiring to obtain a revocable encroachment permit shall prepare and file an application with the Town Manager or his designee which shall contain the following information:
- (1) The name, address, and telephone number of the business desiring the revocable encroachment permit.
  - (2) The name, address, and telephone number of the business operator.
  - (3) A list of proposed encroachments to include the type of food, beverage, or food product to be sold and served, list of any activities/games planned, and any merchandise or sign displays.
  - (4) The hours of operation of the establishment and the proposed hours of operation of the encroachment areas.
  - (5) A drawing or site plan showing the section of right-of-way to be used for the proposed activities, and the section to be kept clear for pedestrian use. All existing obstructions and site triangles shall be labeled and taken into consideration when reviewing applications.
  - (6) Evidence of adequate insurance or other forms of security to hold the town and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the Town Manager ~~in consultation with the town's insurance carrier.~~
  - (7) An indemnity statement, approved by the town attorney, whereby the establishment operator agrees to indemnify and hold harmless the town and its officers, agents, and employees from any claim arising from the operation of the areas encroaching in the right-of-way. The establishment operator shall be responsible for any damages associated with an encroachment.
  - (8) A copy of all permits and licenses issued by the state or the town, including health and ABC permits and business licenses, necessary for the operation of the business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the town for exterior alterations or improvements to the establishment.
  - (9) A sworn statement describing any violation by the establishment operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application.
  - (10) Such additional information as may be requested by the Town Manager or his designee to determine compliance with this section.
  - (11) A fee shall be established in the annually adopted rates and fees schedule to cover the cost of processing and investigating the application and issuing the permit.

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- (b) *Issuance of a permit.* Town staff will evaluate any private revocable encroachment proposed to go on either town right-of-way or town property. No revocable encroachment permit may be issued unless the application is complete and unless the following requirements are met:
- (1) The proposed encroachment activities must be directly associated with an adjacent use, and the same expansion would be approved for the business if it was all proposed on private property.
  - (2) The encroachment shall be under the same management and share the same food preparation facilities, restroom facilities, and other customer convenience facilities as the establishment.
  - (3) The area of encroachment must be operated under the same name as the adjacent established business and may not be open or operated at any time when the adjacent established business is not open for business.
  - (4) All encroachments designed for patron use shall meet all ADA requirements.
  - (5) The establishment seeking to obtain an encroachment permit shall front on and provide ADA compliant access from the business to the encroachment area.
  - (6) The site plan shall be reviewed to ensure no conflicts exist with public safety or infrastructure in the right-of-way (i.e., vision clearance, fire hydrants, stormwater, etc.).
- (c) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:
- (1) Be issued for the period beginning January 1 and expiring December 31 of each year.
  - (2) Not be transferable or assignable.
  - (3) Annual fees shall be established in the town fee schedule.

(Ord. No. 16-1030 , 10-11-2016)

## **Sec. 34-66. Operation.**

- (a) For all buildings immediately adjacent to an encroachment a clear path of travel must be maintained from any building exit, equal in width to the exit door. This path of travel must be free of obstructions for the entire length of the encroachment.
- (b) Encroachments shall not involve permanent alterations to public space. Any ~~tables, chairs, barricades, stanchions, platforms, or other~~ obstructions used in the encroachment area shall be of a type that is easily removed from the public right-of-way. Encroachments shall be removed within 24 hours of notice from the town. If such items are not removed upon 24-hours notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The

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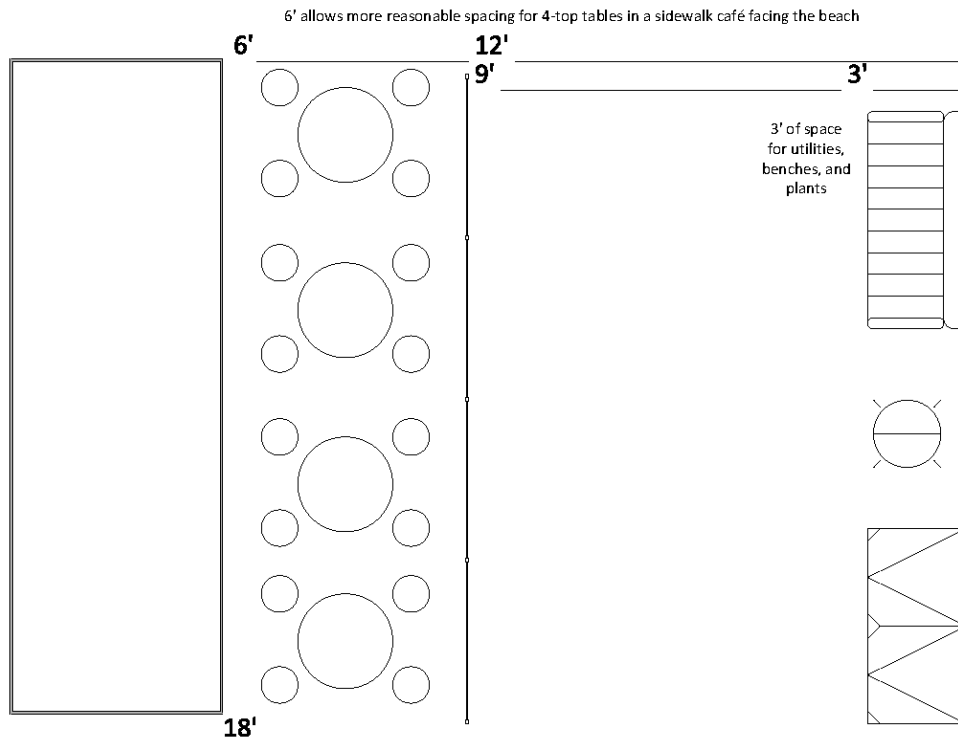
town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to removed encroachments under any circumstances. Permitted encroachments may take place adjacent to the business structure and shall not exceed the width of the business structure. For corner lots, permitted encroachments shall not extend beyond the façade of the building.

~~(c) — At 12:00 a.m., all tables, chairs, barricades, stanchions and platforms used in the operation of the sidewalk cafe shall be removed. The area of the sidewalk cafe shall be reopened to the public and shall not be considered part of the premises of the eating and/or drinking establishment. A sidewalk cafe may open at 7:00 a.m. each morning.~~

~~(d)~~(c) Boardwalk encroachments. For businesses located on the boardwalk, permitted encroachments ~~may take place adjacent to the business structure offering the service or sale of said merchandise, goods or commodity, and shall not exceed the width of the business structure; and, said service, merchandise, goods, or commodity on display for sale~~ shall allow for a minimum of four feet, six inches of area for unobstructed pedestrian travel. In no instance shall an encroachment exceed more than  $\frac{1}{4}$  the width of the boardwalk with the exception of the oceanfront boardwalk. The oceanfront boardwalk may encroach up to six feet from the façade of the building.

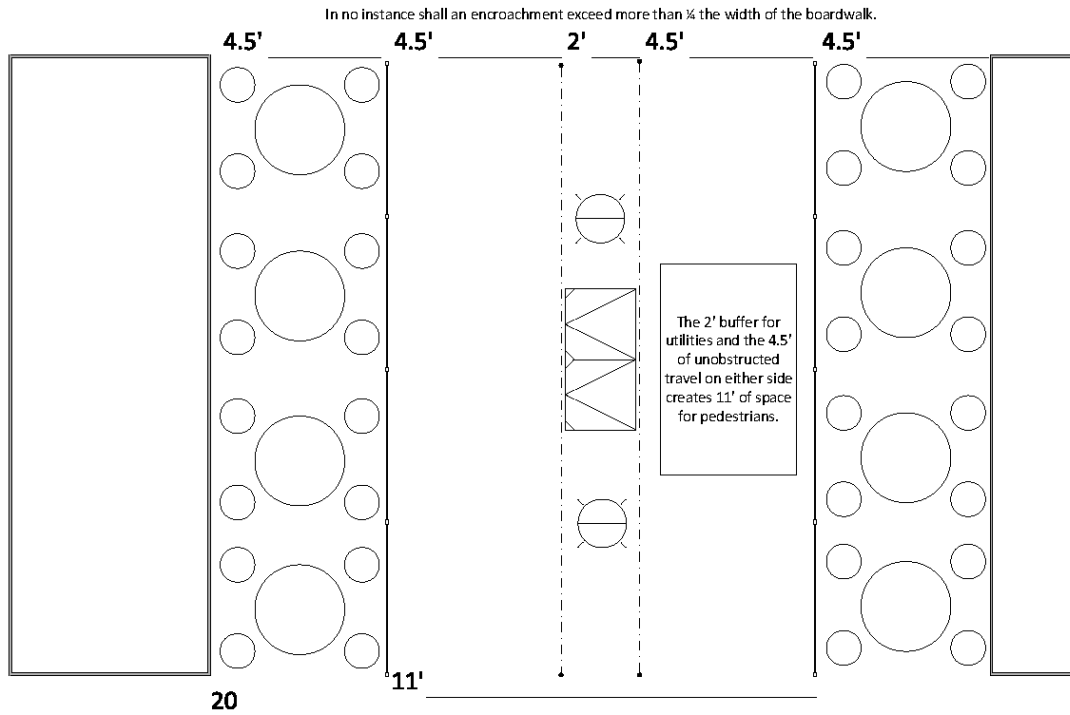
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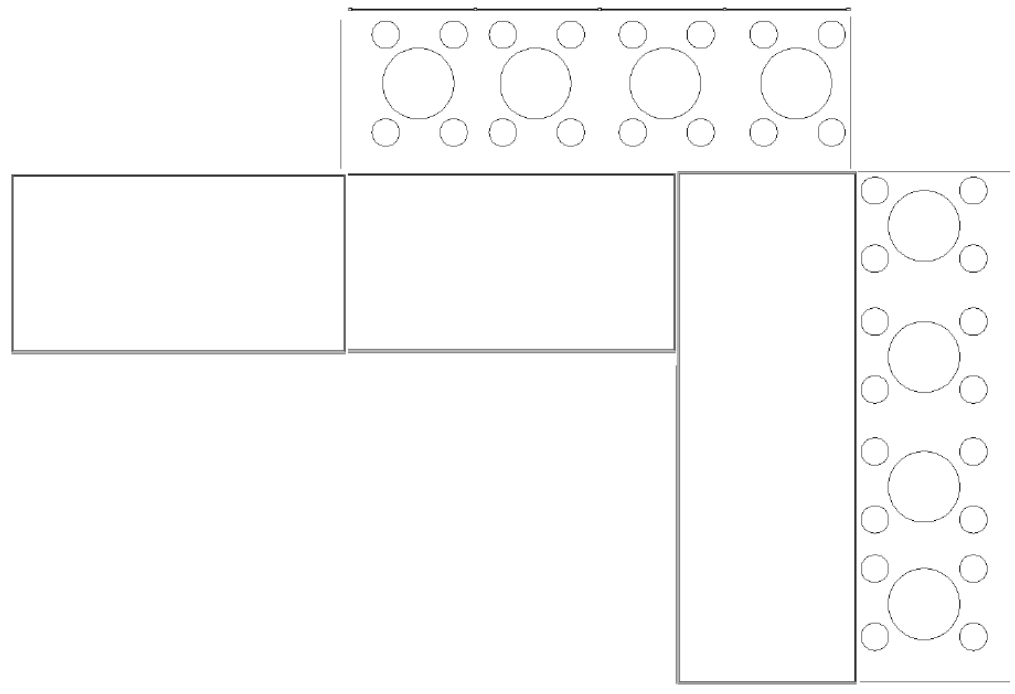
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## Corner Lot Layout



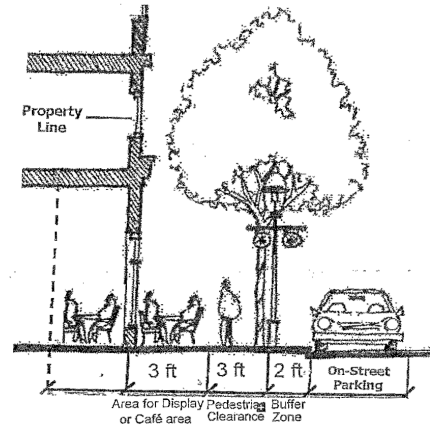
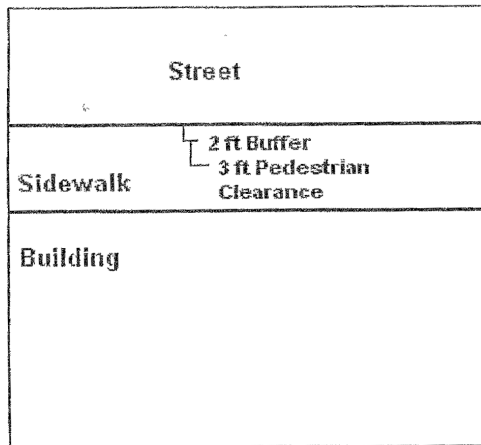
~~(e)~~(d) For businesses in the CBD, not located on the boardwalk.

(1) Encroachments may be allowed on adjacent sidewalks if a minimum clearance of three feet is provided for pedestrian travel.

(2) A two-foot buffer zone, from the face of the street side curb shall not be included as part of the accessible area for pedestrians.

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~~(e)~~(e) For businesses outside the CBD along Lake Park Boulevard.

- (1) Encroachments may be approved outside the CBD on lots adjacent to Lake Park Boulevard that are north of Atlanta Avenue and south of Goldsboro Avenue.
- (2) Where encroachments are located in the right-of-way of Lake Park Boulevard, the property owner shall obtain an approval letter from NCDOT prior to obtaining a revocable encroachment permit from the town.
- (3) Five feet of unobstructed area shall remain on all sidewalks adjacent to approved encroachments.

~~(e)~~(f) Alcoholic beverages in approved encroachment areas. It shall be the responsibility of the operator of the establishment to ensure that patrons comply with these provisions or else be subject to civil penalties. Notwithstanding the provisions of section 18-2, alcoholic beverages may be served in encroachment areas provided the following requirements are met:

- (1) The adjacent business shall otherwise be authorized, permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.
- (2) The encroachment area must be included as part of the premises for which an ABC permit is issued pursuant to G.S. 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages. [All sidewalk café permit holders are responsible for ensuring they meet all state ALE / ABC regulations.](#)

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(3) If utilized, barriers shall be:

i. Size: a minimum of 36 inches and a maximum of 48 inches in height, and must be free-standing, stable, and removable.

ii. Base: The base of the barrier shall be square and flat footed and no more than ½ inch in height.

iii. Barrier connections: Rigid wood or metal shall be utilized to connect each barrier. There shall be a minimum of two but no more than three horizontal rigid connections on each barrier.

iv. Signage: Temporary signage may be utilized in between barriers in accordance with Chapter 40 Article VIII. – Sign Regulations.

~~(3)(4) The premises of the encroachment shall be clearly delineated with stanchions indicating the boundaries where patrons must stay within while in possession of alcoholic beverages in open or unsealed containers.~~ The consumption of alcoholic beverages shall only occur while patrons are seated at tables.

~~(4) Signs shall be posted, visible at all exit points from the encroachment area, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. Further, consumption of alcoholic beverages shall only be allowed while seated.~~

- (5) The eating and/or drinking establishment operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.
- (6) Congregating of patrons in or around encroachment areas shall be prohibited. Alcohol consumption outside of the premises or while standing shall be a violation of section 18-2, drinking in public.
- (7) ~~No alcohol shall be served after 11:30 p.m. and all sidewalk cafés shall be closed by 12:00 a.m.~~ Alcohol sales shall be in accordance with G.S. 18B-1004. Any person consuming alcoholic beverages in a sidewalk cafe after such hours shall be subject to section 18-2, drinking in public.

(Ord. No. 16-1030 , 10-11-2016; ; Ord. No. 18-1083 , 4-10-2018)

## **Sec. 34-67. Permitted canopies in the CBD.**

- (a) Canopies shall be permitted over primary doorways and other areas adjacent to public rights-of-way subject to the following restrictions:

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- (1) Constructed ~~of canvas or other durable cloth or plastic material, with metal or aluminum framing in~~ [accordance with NC Building Code](#); and
  - (2) Containing no lighting.
  - (3) Canopies shall not protrude more than ~~3~~ 4 feet from the face of the adjacent structure and not less than eight feet from the ground level upward and parallel with the structure to the bottom portion of the canopy (see details).
  - (4) Canopies shall be maintained in an acceptable condition at all times, including painting of support frameworks, intact structural frameworks for support, and, canvas, cloth, or plastic coverings shall not be torn, unattached from framework, or punctured to create a tattered appearance.
- (b) Where canopies are not properly maintained, and upon receipt of notice of the Building Inspector, the owner shall have 15 consecutive calendar days to renovate or replace such canopy to acceptable standards and failure to comply with such notice shall require removal of the canopy. Failure to comply with the notice of renovation, replacement or removal shall constitute a violation of this section. Sec. 34-68. Cantilevered decks.

## **Sec. 34-68. Cantilevered decks.**

- (a) Cantilevered decks above and over the public sidewalk area shall not extend more than ~~3~~ 4 feet outward from the adjacent front structure facade; nor beyond the width of the limits of the structure front facade, and shall leave a minimum clearance of ten feet from the adjacent ground/sidewalk elevation to the lowest portion of the cantilevered deck.
- (b) No signage, lights, or other forms of advertisement shall be attached to deck areas that encroach into the right of way.

## **Sec. 34-69. Requirements for alleyway facades between existing or proposed structures.**

All non-publicly dedicated and accepted alleyways or similarities thereof adjacent to public rights-of-way which parallel and separate all or portions of existing or proposed structures and which are not planned or utilized for principal public or private access to such structures or for public or private thru-way shall be covered in order to prevent access by the public to such alleyway, and furthermore the cover (facade) shall be constructed to a height of six feet, acceptable to building and fire codes, and be visually acceptable to public view. The cover (facade), if utilized for emergency fire exits for structures adjacent to the alleyway, shall be easily opened from the interior side. The adjacent structure, existing or planned, which is in the same ownership as the alleyway or adjacent structures, existing or planned, which own the alleyway in common, or portions thereof, shall be responsible for said construction and continued maintenance. All applications for approvals for alleyway coverings (facades) shall be submitted to the Building Inspector in written and plan form describing, in detail, all elements

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related thereto. All violations to this provision shall be resolved within a period of 180 consecutive calendar days from the date of receipt of notice of the Building Inspector.

## **Sec. 34-70. Denial or revocation of permit.**

- (a) *Denial.* A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied an encroachment shall receive a written statement, outlining the grounds on which the denial is based.
- (b) *Permit revocation.* The Town Manager may revoke a permit issued pursuant to this section, if he or she finds that the establishment operator has:
  - (1) Deliberately misrepresented or provided false information in the permit application.
  - (2) Violated any provision of this Code or county health department regulations.
  - (3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.
  - (4) Operations occurring in the encroachment area were in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk cafe area clean and free of refuse.
  - (5) Failed to maintain any health, business or other permit or license required by law for the operation of an eating and/or drinking establishment.
- (c) *Appeal.* The applicant may appeal the denial or revocation of a permit to the town council within 15 working days after the date of the written denial and the town council may take such corrective action as it shall find necessary. The findings and determination of the town council shall be final.

## **Sec. 34-71. Reservation of rights and terms.**

- (a) The town reserves the right to require any encroachment established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the town, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the town.
- (b) If such items are not removed upon 24 hours' notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to any items moved out of an encroachment area.

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## Sec. 34-72. Reserved.

Editor's note(s)—Ord. No. 16-1030 , adopted Oct. 11, 2016, repealed § 34-72, which pertained to areas of permitted encroachments.

## Secs. 34-73-10.2 Reserved.

### RATES AND FEE SCHEDULE

#### Ordinance Violations

#### Chapter 34-Streets, Sidewalks, and Right-of-Ways

Violation	Ordinance-Code Reference	Fine
Violation of encroachments	34-1	<del>\$50.00/day</del> <u>\$100.00/day</u>
<u>Failure to remove encroachments upon 24-hour notice from Town Staff</u>	<u>34-66</u>	<u>\$100.00</u>
Violation of property numbering	34-110	\$50.00/day

#### PLANNING AND ZONING PERMIT PROCESSING FEE SCHEDULE

#### Vending Permits

Sidewalk Café (Annual)

~~\$400.00~~ \$100 + \$2 per sq ft

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Be it ordained by the Town Council of the Town of Carolina Beach. Adopted this 14<sup>th</sup> day of November, 2023.

TOWN OF CAROLINA BEACH

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Albert L. Barbee, Mayor

ATTEST:

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Kimberlee Ward, Town Clerk