

Ordinance # \_\_\_\_\_

**An Ordinance Establishing the use of Public Sidewalks for the Town of Old Fort**

WHEREAS, The Town of Old Fort has the authority to control the use of its streets and sidewalks, pursuant to Chapter 160A, Article 15: Streets, Traffic and Parking; and

WHEREAS, The Town of Old Fort has the authority, pursuant to Chapter 160A, Article 8, Delegation and Exercise of the General Police Power, and Article 2: General Corporate Powers, to adopt ordinances to control the use of its streets and sidewalks.

NOW, THEREFORE, it is hereby ordained by the Board of Aldermen of the Town of Old Fort as follows:

**Section 1 Purpose**

1.1 – This Ordinance shall be applicable to all public sidewalks within the Town of Old Fort and shall control the use of such sidewalks and their maintenance, requiring that public sidewalks be maintained and kept free of any obstructions to free passage of pedestrians along such public sidewalks.

1.2 – 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.

1.3 – The regulations made applicable to public sidewalks herein shall also apply to that public park and walkway area lying between Main St East and West and Catawba Ave.

**Section 2 Definitions.** For purposes of this Ordinance, the following terms shall have the meaning given.

Sidewalk easement or right of way. 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.

Public. Available for use by the general public and controlled and maintained by the Town of Old Fort, the County of McDowell, the North Carolina Department of Transportation, or other governmental entity.

Public roadway. The traveled portion of any public street used for vehicular traffic.

Public sidewalk. All sidewalks within the right of way of public roadways shall be considered public sidewalks. All sidewalks previously constructed by the town, or dedicated for public use to the town, shall be considered public sidewalks.

Town. The Town of Old Fort, North Carolina.

**Section 3 Interpretation.**

Unless otherwise provided, this ordinance shall be interpreted by the general rules of interpretation as provided by and for state law. Except as otherwise provided or required by context, the following specific rules of interpretation shall apply:

- A. Gender. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders, and vice-versa.
- B. Singular and plural. Words in their singular form shall include the plural, and words in their plural form shall include the singular.
- C. Tenses. Words denoting the present tense shall also include the future tense.

**Section 4 Structures, merchandise, equipment, or other objects on sidewalks or in easements**

4.1 – 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 Section 5.

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

4.3 – 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 the ordinances and policies adopted by the Town.

4.4 - Any vegetation or other covering such as decorative pavers on the area lying between the traveled portion of the sidewalk and the public roadway shall not exceed six (6) inches in height. This prohibition shall not apply to uses of such area in violation of this section as of the time of adoption of this ordinance, except as the same may be prohibited by state or federal law.

**Section 5 Encroachment agreements**

5.1 – It is the policy of the Town of Old Fort 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. Section 9 contains limitations to this Section.

5.2 – 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:

- A. Written application shall be made to the town or their designee. If the application pertains to a sidewalk and not to a public park as defined in Section 2, 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.
- B. The application shall state the reason for the encroachment.

- C. The town or their 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:
1. The location, type, and size of the encroaching structure(s) or merchandise.
  2. Whether the encroaching structure(s) or merchandise will unreasonably interfere with pedestrian or vehicular passage or safety.
  3. Whether the encroaching structure(s) or merchandise will interfere with existing water or wastewater line, storm water facility, or other utility.
- D. The town or their designee shall set forth in writing the reason for granting or denying an encroachment pursuant to this division.
- E. The terms of the encroachment agreement shall be:
1. The agreement may be terminated upon ninety (90) days' notice from the enforcement officer or her/his designee.
  2. The agreement shall also be subject to termination upon ten (10) days' notice at such time as the town or their 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.
  3. 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.
  4. 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.
  5. 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.

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

6.2 – The sponsor of the event or festival shall submit to the town or its designee a written application requesting permission to hold such event, prior to the opening of the community event or festival for which permission is desired. Such application shall be submitted no less than seven (7) business days, (Monday thru Friday), 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:

- A. The time, date, and location of the festival or event;
- B. The group, firm, or individual by whom the event will be sponsored;
- C. The purpose of the festival or event; and
- D. The activities that will be included.

6.3 – In granting permits for community events and festivals, the town or its designee shall consider the following:

- A. The nature of the event or festival and how it can serve the community of the town and its citizens;
- B. The time period during which the event or festival will occur;
- C. The location of the event or festival and whether the location inhibits the safe flow of traffic in the town;
- D. Whether the activities would be in compliance with other applicable laws;
- E. 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 or their designee that the event or festival constitutes a community service; and
- F. The general health, safety, and welfare of the participants in the event or festival and the citizens of the town.

6.4 – 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 cleaning, as determined by the town or their designee. Such payment of costs shall not apply to Town sponsored events.

6.5 – 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 7      Awnings, overhangs, signage**

7.1 – 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 5, paragraph 5.2 above.

7.2 – No portion of any awning, overhang, or signage shall be less than seven (7) feet above the surface of the sidewalk.

7.3 - Outdoor displays and signs on sidewalks in the Central Business District are subject to the following requirements:

- A. No outdoor display or sign located on a sidewalk shall reduce the clear accessible travel path of the sidewalk to a width of less than 36 inches. The width of the clear accessible travel path shall be measured from the street-side edge of the concrete sidewalk perpendicularly toward the building-side edge of the concrete sidewalk. When outdoor displays or signs are located on a sidewalk such that the travel path is reduced to 36 inches in width, there must be an area at least 60 inches by 60 inches left open no less frequently than every 20 feet, and no displays or signs are to be placed on the sidewalk at the ends of crosswalks.
- B. Outdoor displays and signs located on a sidewalk shall be situated, outfitted and used in a manner that does not constitute a hazard to persons using the sidewalks.

**Section 8      Bicycles, Skateboards, and Similar Apparatus on Sidewalks**

8.1 – No person shall ride or operate a bicycle, skateboard, scooter, skates, or similar apparatus upon the sidewalks within the central business district consisting of East and West Main St and Catawba Avenue. Motorized chairs or mobility scooters operated by the disabled would not be restricted from sidewalks.

8.2 – 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 East and West Main St and Catawba Avenue.

8.3 – 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 9      Central business district**

9.1 – The central business district as used herein shall be defined as East and West Main St and Catawba Avenue.

9.2 – 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.

9.3 – 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.

9.4 – The town reserves the right and privilege to place planters, seating areas, trash/recycling receptacles 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.

9.5 - Use of certain right-of-way for sidewalk dining as allowed by N.C.G.S. § 136-27.4.

In the event the Town enters into an agreement with the North Carolina Department of Transportation permitting use of the State right-of-way associated with components of the State highway system and located within the zoning jurisdiction of the Town for sidewalk dining activities, as a minimum the requirements and restrictions set out in N.C.G.S. §136-27.4 shall apply.

9.6 – 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 5, paragraph 5.2 above. In the event such an encroachment agreement is issued, the following restrictions shall apply:

- A. 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, provided, however, When outdoor displays or signs are located on a sidewalk such that the travel path is reduced to 36 inches in width, there must be an area at least 60 inches by 60 inches left open no less frequently than every 20 feet and no displays or signs are to be placed on the sidewalk at the ends of crosswalks.
- B. 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.
- C. 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 Peddlers License.

- D. Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks, or intersections.
- E. 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.
- F. All displays of merchandise must be of sufficient size, height, and position so that safe pedestrian traffic is not impeded.
- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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 10      Spaces under sidewalks**

10.1 – 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 board of aldermen, which permit shall be revocable at the will of the board 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.

10.2 – 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.

## **Section 11      Enforcement**

Any person or company in violation of the requirements of this ordinance may be issued a notice of violation by any police officer or code enforcement officer of the Town of Old Fort. Violations of this ordinance shall be punishable by imposition of a civil penalty of \$50.00 collectible by the Town in the form of a debt. Each day a violation shall occur shall constitute a separate violation. Further, the Town may enforce this ordinance by seeking equitable relief from the courts in the form of injunctions and orders of abatement.

**Section 12 Severability**

If any portion of this ordinance shall be found unconstitutional or otherwise invalid by a court of proper jurisdiction, all remaining provisions shall remain in effect and shall not be affected by the ruling on the invalid section.

**Section 13 Effective Date**

This ordinance shall become effective immediately upon adoption.

Upon motion made and duly seconded, this ordinance was adopted by the Board of Aldermen, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_, Town Clerk