

Proposed Chapter 28 Regulation of Public Sidewalks

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Sec. 28..... Purpose

The purpose of this ordinance is to regulate the use of the sidewalks and public rights of way within the town of Gate City, Virginia, to provide for the beautification of the town and general benefit of pedestrians.

Sec. 28.1..... Definitions

28.1.1 Sidewalk means any paved area for pedestrian traffic, usually along a street or roadway.

28.1.2 Encroachment For the purpose of this ordinance, an encroachment is the placement in whole or in part of any item, display, merchandise or structure upon or above any public way such as, by way of illustration and not limitation, streets, alleys, trailways, sidewalks, easements and rights of way of the town.

Sec. 28.2..... Encroachments Generally

28.2.1 This Chapter shall be applicable to all public sidewalks within the Town of Gate City. All sidewalks within the express or implied right-of-way 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.

28.2.2 Any area lying between public roadways and public sidewalks shall be deemed to be within the sidewalk easement and right of way and subject to the provisions of this ordinance.

- 28.2.2 Structures, merchandise, equipment, or other objects.
- a Except as may be specifically otherwise provided in this Chapter, no structures, merchandise, equipment, or other objects of any kind may be placed on or upon public sidewalks or trailways except as specifically permitted by the town as set forth in a duly executed encroachment agreement.
 - b Where designated trailways are not also a part of the town's sidewalk system, encroachment of any type not associated with an event sponsored, conducted and/or permitted by the town is prohibited.
 - c Such prohibition shall not apply to loading, unloading, moving, or transportation of such merchandise, equipment, or other objects in accordance with the provisions of Chapter 19 of the Gate City Code of Ordinances.
 - d This prohibition shall not apply to solid waste garbage cans and recycling containers approved or issued by the town and placed in accordance with the provisions of Chapter 9 of the Gate City Code of Ordinances. 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 Gate City Code of Ordinances or other policies adopted by the Town.
- 28.2.3 Violations of any provision of this Section shall constitute a class 4 misdemeanor. Each day of violation shall constitute a separate offense.

Sec. 28.3..... Encroachment agreements.

- 28.3.1 It is the policy of the Town of Gate City 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. Nothing in this chapter shall be construed as giving to any person any kind of right, interest or easement in any street, alley, sidewalk or public way of the town for any sign, or other encroachment of any type whatsoever, whether the same be attached to the street, alley, sidewalk or public way or is hanging over the same or is a portable or temporary display. It is expressly understood and provided that the owner, lessee or custodian of such an encroachment is a mere licensee and subject to the will of the council.
- 28.3.2 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 Manager. The application 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 Manager 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 encroachment will allow for a minimum of 6 feet of unimpeded sidewalk space for pedestrian traffic, or if on a street or alley, a minimum of 9 feet for the passage of vehicles. In cases where a sidewalk is less than 6 feet in width, a minimum of 4 feet of unimpeded space shall be required.
 - (3) Whether the encroaching structure(s) or merchandise will interfere with an existing water or wastewater line, storm water facility, or other utility.
- d The Town Manager shall set forth in writing the reason for granting or denying an encroachment agreement.
- e The terms of the encroachment agreement shall be:
- (1) The agreement shall be subject to termination upon ten (10) days notice at such time as the Town Manager or the town council 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.
 - (2) The owner and/or lessee obtaining the encroachment agreement shall agree that, upon such termination, if the owner and/or or lessee shall fail to remove the encroachment within thirty (30) days following the giving of the notice by the town in accordance with subsection (1) 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.
 - (3) The property owner and/or lessee 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 Uniform Statewide Building Code, and all other applicable building codes of the Commonwealth of Virginia, and all other health and safety laws and regulations.
 - (4) If the property is sold or, where applicable, if the lease is terminated after execution of the encroachment agreement, the encroachment agreement shall transfer of title.

Sec. 28.4..... Community Events and Festivals.

28.4.1 Notwithstanding the provisions of this chapter to the contrary, the town is hereby authorized to permit, sponsor, and/or conduct certain types of community events or festivals to take place upon the public streets, sidewalks, and trailways of the town.

28.4.2 Community events or festivals shall be governed by ordinances adopted specific to such events. Nothing in this ordinance shall be deemed applicable to community events or festivals except as related to their use of the public streets and sidewalks of the town.

Sec. 28.5..... Awnings, Overhangs, and Signs.

- 28.5.1 No awning, overhang, or sign, 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 Item 3, above.
- 28.5.2 In addition to all other requirements as may be necessary for consideration of an encroachment permit, no portion of any awning, overhang, or sign shall be less than seven (7) feet above the surface of the sidewalk. Existing awnings that may not meet the specifications as defined in 28.5 are exempted under the grandfather clause.

Sec. 28.6..... Bicycles, Skateboards, and Similar Apparatus

- 28.6.1 No person shall ride or operate a bicycle, skateboard, scooter, skates, or similar apparatus upon the sidewalks of the C1 and C2 districts.
- 28.6.2 Motorized scooters, mopeds, and similar apparatus are prohibited on all public sidewalks within the town. This prohibition shall not apply to personal assistive mobility devices used by persons with mobility impairments.
- 28.6.3 Riding and operating bicycles, skateboards, scooters, skates, and other similar apparatus are allowed only on those trailways and recreational areas where the use is not posted as prohibited, subject to other provisions of this Code of Ordinances and policies of the town. Bicycles and mopeds may travel on the public roads alongside other non-pedestrian traffic in accordance with town, county, and state ordinances, including, by way of illustration and not limitation, Code of Virginia 46.2-905.
- 28.6.4 A violation of this section may be punishable by a civil penalty of \$25.00 per violation.

Sec. 28.7..... Central Business District C2

- 28.7.1 The central business district as used herein shall be defined as set forth in the Comprehensive Zoning Ordinance of the Town of Gate City.
- 28.7.2 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 also in equal measure the use and enjoyment of the public. To this end, this ordinance specifically regulates the conditions under which encroachment agreements may be granted for the central business district.
- 28.7.3 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.
- 28.7.4 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 and/or lessees may be considered for planters, seating, and other objects consistent with those planters and seating areas maintained upon such public sidewalks by the town.
- 28.7.5 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 Item 3, 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 six (6) feet of unimpeded passage for pedestrian traffic shall be provided at all times.
- 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. This section shall apply to the display of merchandise. The actual sale of merchandise on town sidewalks are governed by Chapter 11 and other ordinances and policies of the town.
- 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 no less than four (4) feet in height, and sufficient size 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, the Town Manager may allow encroachment permits for the display of merchandise and the use of such fixtures or devices during the hours the retail business is not operating, including overnight.
- 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 forthwith from the sidewalk when directed to do so by any 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 or liability arising from 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.

Sec. 28.8..... Conflicting Ordinances

28.8.1 This ordinance specifically repeals sections 19.4, 19.5, 19.6, 19.12, 19.14, 19.15 and 19.20 of the Gate City Code of Ordinances. Such repeal shall not vacate any action currently in process or before any court under such repealed ordinances.

28.8.2 Any provisions of like nature within the Gate City Code of Ordinances not specifically repealed by this Chapter are intended to be enforced along with, in addition to, and/or separately from the provisions of this ordinance. In the case of any conflict, the more stringent ordinance shall apply.

Sec. 28.9..... Severability

If any provision of this Chapter is found to be invalid or unenforceable by a court of competent jurisdiction in the Commonwealth, the remaining provisions shall retain their full force and effect.

Sec. 28.10..... Effective Date

This ordinance shall be effective as of 12:01 am of August 6, 2009.

Signed,

Mayor

Date

Town Clerk

Date