



# **Historic District Commission**

## **Meeting Agenda**

April 3, 2013 at 5:30pm  
Council Chambers, 201 S Main St

1. Approval of minutes of the November 28, 2012 meeting
2. Review and recommend approval of proposed standards and guidelines for outdoor displays, dining and other temporary encroachments
3. Update on 2012-13 Façade Grant projects

*A complete agenda packet is available at [www.cityofgraham.com/boards](http://www.cityofgraham.com/boards).*

HISTORIC DISTRICT COMMISSION  
Wednesday, November 28, 2012

The Historic District Commission held a called meeting on Wednesday November 28, 2012 at 5:00 p.m. in the Council Chambers of the Graham Municipal Building. Commission Members present were Larry Brooks, Cary Worthy, Jimmy Linens, Brenda Sykes, Lauren Nance, Denise Baker and Steven West. Eric Crissman and Hayes Teague were absent. Staff members present were Melissa Guilbeau, City Planner, and Martha Johnson, Zoning/Inspections Technician.

Larry Brooks called the meeting to order.

1. A motion was made to approve the minutes from the November 28, 2012 meeting by Steven West and seconded by Cary Worthy. The motion carried unanimously.

2. The next item on the agenda was the applications for the 2012-2013 Façade Grant Program:

2a. Audrey McHugh, for McDavis Enterprises, located at 102 E Pine St and 146 & 150 S Main St. was requesting clad window frames in white vinyl, to match the work that was done on other window on this property with 2011-12 façade grant. Angela Davis stated they were requesting vinyl clad around the rest of their windows to match the one done last year. This cost would be \$485.00.

2b. Carolina Property Holdings, for East Coast Realty Group, located at 200 N Main St. was requesting to repair repaint and reseal all windows and window frames to resolve wood damage, drafts and aesthetically improve, and to match colors of new fabric canopies (funded with 2011-12 façade grant). Also to repair the front metal entry canopy which is original to building to good condition and to match present fabric canopies and point up and seal damaged brick/mortar areas of façade. Additionally install lighting along metal canopy to provide exterior lighting. Jason Cox represented Carolina Property Holdings and he stated black would be used to repaint to match the awning. Steven West asked what type lighting would be installed and Mr. Cox said it would be consistent with the awning. The cost would be \$7,345.00.

2c. Court Square Development Group, for Farm Services, Extreme Graphics and Life Changes, located at 123 & 125 E Elm St. requested to install new layer of brick veneer using white, weathered brick; includes new footing for veneer, restore brick archway around main entry door. Install new white doors, windows, and also install a new blue metal awning over main entry door along with replacing signage. Chuck Talley spoke for the Court Square Development Group for Farm Services. He stated they would use white brick and were adding a 6' door at the archway. The 8 x 8 metal canopy would be wrought iron and would meet all fire and building inspections specifications. Mr. Talley said the cost should be changed from \$43,380.00 to \$36,000.00 because they would remove the awning that would not be done until Spring. Mr. Talley said he currently had three tenants in the building.

2d. Property located at 20 SW Court Square/102 W Elm St was requesting to repaint the Elm St side of the building with the same colors, paint over the "Laskody Law Office" mural and replace all window shutters (some of which have already fallen off). Lee Laskody said they were redoing the entire Elm Street wall. The paint being used would be the same color. Mr. Laskody stated they were replacing the shutters and trimming around the door. The cost would be \$2010.00. Steven West asked if the shutters could be a little wider than proposed. He thought it would be more appealing if wider and Mr. Laskody agreed with him. Cary Worthy asked if they would paint over the sign and Mr. Laskody said yes.

Larry Brooks said if each applicant was given the maximum City of Graham match which totaled \$9919.00, would that be ok with the Commission or did anyone wish to change any of the amounts. Steven West made a motion to approve, Brenda Sykes second. The motion carried unanimously.

3. The next item on the agenda is the Applications for Certificates of Appropriateness.

3d. Crystal Waggoner, 205 N Main St. wishes to install a new wall sign. Crystal Waggoner of Full Circle at 205 N. Main Street said she installed a wall sign but it has to be real high above the apartments and people can't see her sign. She wants to move it over the awning in order to be lower and visible. She was asking permission from the Historic District Commission to move the sign down. Cary Worthy made a motion for approval, second by Brenda Sykes. The motion carried unanimously.

Cary Worthy made a motion for the Planning Board to look at signage on buildings, second by Brenda Sykes. The motion carried unanimously.

Steven West made a motion to approve the other 3 Certificate of Appropriateness applicants, second by Brenda Sykes. The motion carried unanimously. They are as follows:

- 3a. Carolina Property Holdings, 200 N Main St, for work proposed in the Façade Grant application; see item 2b above
- 3b. Court Square Development Group, 123 & 125 E Elm St, for work proposed in the Façade Grant application; see item 2c above
- 3c. Lee Laskody, 20 SW Court Square/102 W Elm St, for work proposed in the Façade Grant application; see item 2d above

4. The next item was to elect a Vice Chair for the Historic District Commission. Larry Brooks made a motion to elect Steven West, Brenda Sykes seconded the motion. The motion carried unanimously.

With no further business the meeting was adjourned.

Respectfully Submitted,  
Martha Johnson



# STAFF REPORT

Prepared by Melissa Guilbeau, City Planner

## Downtown Outdoor Displays, Dining and Other Temporary Encroachments

**Type of Request:** Review and recommendation on Text Amendment to Development Ordinance and Revision to Code of Ordinances

## Meeting Dates

Historic District Commission on April 3, 2013  
Planning Board on April 16, 2013  
City Council on May 7, 2013

## Contact Information

not applicable

## Summary

The City's Code of Ordinances states that "no person shall obstruct or block any street or sidewalk in the city." However, it also provides the following:

Chapter 18, Article I, Sec. 18-6(c): "Merchants may use the sidewalks for unpacking or opening merchandise, but must immediately remove said packing and merchandise therefrom. A space of three feet may be allowed to merchants immediately in front of their place of business for display of merchandise."

Some businesses and other individuals have expressed an interest in being able to provide outdoor dining areas on the sidewalks in the downtown area. A current example of this is Barrister's Café, which has operated a sidewalk café through a short-term special use permit since 2000.

In order to allow others in the B-1 zoning district to operate outdoor dining areas or other types of display associated with their business on the sidewalks, staff proposes to amend the Code of Ordinances to add a section that establishes a permit for such activity, along with specific standards for these activities.

Much of the B-1 zoning district is also in the Courthouse Square Historic District. Therefore, the Historic District Commission should provide its recommendation on the proposed amendments, which are summarized below and attached in full:

- Amend Chapter 18, Article I, Sec. 18-6(c) of the Code of Ordinances to continue to allow merchants use of the first three feet of the sidewalk from the face of their building, but with a new requirement that it meet the standards of the new Article VII, and state that any encroachment beyond the three feet requires a permit as outlined in the new Article VII.
- Amend Chapter 18, Article VI of the Code of Ordinances to provide additional reserved sections at the end of the article.

### **Project Name**

Downtown Outdoor Displays,  
Dining and Other Temporary  
Encroachments

### **Location**

B-1 Zoning District

### **GPIN**

not applicable

### **Current Zoning**

not applicable

### **Proposed Zoning**

not applicable

### **Staff Recommendation**

Approval

- Add a new Article VII to Chapter 18 of the Code of Ordinances. This article establishes a permit for outdoor displays, dining and other temporary encroachments on sidewalks in the B-1 zoning district, with an annual fee, standards, prohibited acts, conditions, and penalties.
- Add a new Appendix B to the Development Ordinance that establishes guidelines that would allow staff to approve permits for outdoor displays, dining and other temporary encroachments in the Courthouse Square Historic District. Any application for a temporary encroachment permit in the Historic District that did not meet these adopted guidelines would have to obtain a Certificate of Appropriateness before their permit application would be approved.

## Conformity to the *Growth Management Plan (GMP)*

**Planning District:** North

**Development Type:** Town Center

### Applicable Goals to Guide Us into the Future

- 6.1.2. Continue to support efforts that identify, restore and/or reuse cultural and historic structures, buildings, monuments and neighborhoods. *These amendments would support restoration of the Courthouse Square Historic District by allowing additional economic opportunity to existing or new businesses that is compatible with the district.*
- 6.1.2. Promote Graham’s Cultural and Historic Resources as a potential tourist destination. (i.e. Arts, Around the Square, Alamance County Arts Council, Downtown, Providence Church, etc.) *These amendments would help to promote downtown as a tourist destination by allowing outdoor display and dining that will enhance the streetscape of the district.*
- 6.1.3. Adopt and enforce community appearance standards that help to improve the aesthetics of the City. *The guidelines will establish standards for the appearance of outdoor displays and dining that will enhance the Historic District.*

### Description of Development Type

Town Center

### Development Toolkit Checklist

Located near a major thoroughfare

For single family residential, townhouses, apartments & condominiums, commercial, office/institutional and mixed use

Characteristics include pedestrian-oriented; design requirements; sidewalks; street trees; height of structures regulated; building orientation

Density of 5+ DU/acre or 10,000 to 100,000sf of retail

Infrastructure includes water, sewer, street connectivity and underground utilities

### Applicable Planning District Policies and Recommendations

- 7.3.4.1.1. Encourage infill development within the district, as well as redevelopment efforts of deteriorating structures. *These amendments would provide space for expanded business operations within the confines of the downtown area, which is largely built-out.*
- 7.3.4.1.6. Continue to encourage the redevelopment efforts underway within the Town Center. *These amendments would provide a new incentive and opportunity for redevelopment.*
- 7.3.4.1.7. Promote the Town Center as the commercial and governmental center of Graham. *These amendments would only apply to the B-1 zoning district, which is entirely within the Town Center, and part of the stated purpose of these amendments is to “promote the general economic development and atmosphere of the B-1 district.”*

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## **Staff Recommendation**

Based on the *Growth Management Plan 2000-2020*, the *City of Graham Development Ordinances* and research of other jurisdictions and best practices, staff **recommends approval of these amendments**. The following supports this recommendation:

- Permitting outdoor display and dining on the sidewalks of the B-1 zoning district, within adopted standards and guidelines, with further a number of goals and policies of the *Growth Management Plan*.

## **Suggested Motion Formats**

- I move that we recommend to the City Council that they adopt the proposed amendments to the Code of Ordinances for outdoor displays, dining and other temporary encroachments.
- I move that we approve the “Historic District Design Guidelines for Outdoor Displays, Dining and Other Temporary Encroachments” and recommend to the Planning Board and City Council that these be adopted as Appendix B of the *City of Graham Development Ordinances*.

# Proposed Amendments to the Code of Ordinances for Outdoor Displays, Dining and Other Temporary Encroachments

Amend Chapter 18, Article I, Sec. 18-6(c) of the Code of Ordinances as follows:

*Showing changes*

Merchants may use the sidewalks for unpacking or opening merchandise, but must immediately remove said packing and merchandise therefrom. A space of three feet from the face of the building may be allowed to ~~merchants~~ business owners immediately in front of their place of business for the display of merchandise or placement of seating, planters or other items directly related to operation of the business or for beautification, provided the standards and prohibited acts outlined in Article VII of this chapter are adhered to. For the placement of any items beyond three feet from the face of the building, business owners may obtain a temporary encroachment permit from the City in accordance with Article VII of this chapter.

*Final result*

Merchants may use the sidewalks for unpacking or opening merchandise, but must immediately remove said packing and merchandise therefrom. A space of three feet from the face of the building may be allowed to merchants business owners immediately in front of their place of business for the display of merchandise or placement of seating, planters or other items directly related to operation of the business or for beautification, provided the standards and prohibited acts outlined in Article VII of this chapter are adhered to. For the placement of any items beyond three feet from the face of the building, business owners may obtain a temporary encroachment permit from the City in accordance with Article VII of this chapter.

Amend Chapter 18, Article VI of the Code of Ordinances to add the following:

**Secs. 18-183–18.189. - Reserved**

Add the following new Article to Chapter 18 of our Code of Ordinances:

## **Article VII. – Downtown Outdoor Displays, Dining and Other Temporary Encroachments**

### **Sec. 18-190. - Purpose and applicability of article.**

The provisions of this article shall apply to the establishment, operation and maintenance of outdoor displays, dining areas and other temporary encroachments within the Central Business District (B-1). The purpose of this article is to promote the general economic development and atmosphere of the B-1 district for the benefit of all businesses and citizens located there, and no rights of individuals or individual businesses are created in this article. The city manager or his or her designee shall have broad discretion to grant, modify or revoke permits issued pursuant to this article in the interests of improving the public health, safety and welfare.

**Sec. 18-191. - 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:

Administrator. The city manager or his or her designee or another person authorized by the city manager to enforce this article.

Encroachment. Stands, tables, umbrellas, awnings, chairs, displays, objects related to the business, or other items for sale on the public right-of-way, sidewalk or common area on public property.

Outdoor dining. The placing, locating or permitting of the placing or locating of chairs, tables and/or related appurtenances on the public sidewalk adjacent to a business licensed to operate as an eating establishment where food and/or other refreshments are served.

Permittee. The recipient of a temporary encroachment permit under the terms and provisions of this article.

Sidewalk. That area of the public right-of-way between the curblines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.

**Sec. 18-192. - Permit required.**

(a) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor dining area, or place any items upon the sidewalks or public property, in the B-1 zoning district unless he shall hold a currently valid permit issued under the terms of this article.

(b) Permits shall be issued only to validly licensed businesses that wish to provide tables and chairs or other objects related to their business on the public property adjacent to their businesses for use by the general public.

(c) Encroachments that exist and are permitted as of the effective date of this article shall have a period of two (2) years to come into full compliance with this article. Failure to come into full compliance will result in penalties as outlined in Sec. 18-197.

(d) Any property that fronts on right-of-way maintained by the North Carolina Department of Transportation...

**Sec. 18-193. - Application for permit; annual fee and inspection; modifications to permit.**

(a) Application for the permit required by this article shall be made in a form deemed appropriate by the administrator. Such application shall include but not be limited to the following information:

- (1) Name and complete contact information for the applicant, and for the owner of the business if other than the applicant.



(2) Contact information for a responsible person whom the City may notify or contact at any time concerning the permitted encroachment.

(3) A copy of a valid business license to operate a business establishment adjacent to the public property which is the subject of the application.

(4) Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee and the City from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the temporary encroachment permit. Such insurance shall name the City as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty (30) days' advance written notice to the City. The policy shall be a minimum required amount as determined by the City's risk manager.

(5) Proof of any required ABC license, health permits or other state permits for the business involved.

(6) A plan, drawn to scale, of the proposed outdoor dining area or other proposed encroachment, showing the layout and dimensions of the existing public area and adjacent private property and of the proposed public area with encroachments. If awnings, umbrellas, trees or other overhead structures are in the area, include an elevation, drawn to scale with dimensions.

(7) Photographs, drawings or manufacturers' brochures sufficient to demonstrate that all encroachments meet the standards outlined in Sec. 18-194 below.

(b) Not later than fifteen (15) days after the filing of a complete application for a temporary encroachment permit, the applicant shall be notified of the decision on the issuance or denial of the permit. Upon issuance of the permit, an annual fee shall be due and payable as fixed from time to time by the City Council and as set forth in the fee schedule. This fee is in addition to the business license fee required for operation within the City. No fees shall be charged for encroachments solely for awnings or for the purpose of beautification, such as planters, but all other provisions of this article shall apply. An inspection of the permitted encroachment area shall be made at least annually.

(c) Should the permittee wish to modify or in any way change the permitted encroachment, the permittee shall submit plans, elevations, photographs, drawings or other exhibits sufficient for the administrator to approve said modifications. If a modification, in the opinion of the administrator, is of such a scale or nature as to require an inspection, the permittee shall pay the minimum building inspection fee as set forth in the fee schedule.

#### **Sec. 18-194. - Standards.**

No permit shall be issued unless it meets all of the following standards, as applicable:

(1) The permitted temporary encroachment area is limited to the area directly abutting the existing place of business, unless written consent of adjacent landowners and businesses is obtained and

submitted with the application. For outdoor dining only, the permitted area may extend to the curb, provided that all encroachments are arranged so as to meet the minimum unobstructed pedestrian travel width and height, as described in (2) below. For awnings only, the awning may span multiple businesses if the application is made by and the permit is issued to the owner of the building.

(2) Pedestrian travel upon the sidewalk shall be unobstructed a minimum of six (6) feet in width and seven (7) feet in height. This area must be clear of obstructions caused by trees, tree wells, posts, poles, hydrants or any other infrastructure, and any encroachments, including the operation of outdoor dining areas (i.e. patrons seated at tables and waitstaff serving tables). In areas of congested pedestrian activity, the administrator is authorized to require a wider pedestrian path, as circumstances dictate. Also, no items shall be placed so as to block ingress or egress to or from any building, driveway, crosswalk, bus stop or counter service window.

(3) Awnings located directly above the first floor of a building shall extend a minimum of four (4) feet from the face of the building and may extend to within one (1) foot of the vertical plane of the curb. In addition to a temporary encroachment permit, awnings also require a building permit, application for which must be included with the application for the temporary encroachment permit.

(4) Furniture, awnings or other decorative materials shall be fire-retardant, pressure-treated or manufactured of fire resistive material, and shall not contain any commercial advertising. Additionally, all furniture, especially umbrellas, must be designed and installed to be secure in windy conditions.

(5) Outdoor lighting of the encroachment area may not be directed at or excessively illuminate any area other than the encroachment area, including the upper floors of adjacent buildings.

(6) Any portion of an outdoor dining area adjacent to a building may be enclosed by a removable physical barrier or delineator separating patrons from pedestrian traffic. Acceptable barriers or delineators include:

(a) Wrought iron fencing, wooden fencing, picket fencing (with blunt pickets), or posts and chains/ropes. Physical barriers must be between thirty (30) and fifty (50) inches in height and at least 50 percent open (see-through) in order to maintain visibility of street-level activity.

(b) Planters, such as paneled flower boxes. Planters may not exceed a height of thirty-six (36) inches above the level of the sidewalk. (This pertains only to the planter, not the plants contained therein.) Plants, whether live or artificial, may not exceed a height of eight (8) feet above the level of the sidewalk. All planters must have plants contained within them. If the plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way. Empty planters, or planters with only bare dirt, mulch, straw, woodchips or similar material, are not permitted.

All barriers must be detectable to visually impaired pedestrians who employ a cane for guidance; therefore, the bottom of barriers must be no greater than twenty-seven (27) inches above the sidewalk surface. All access openings in the barrier or delineator must measure no less than forty-four (44) inches

in width, and if a gate is used, it must swing into the property and remain unlocked during business hours.

(7) In the Courthouse Square Historic District, all furnishings, fixtures and other decorative materials shall adhere to standards approved by the Historic District Commission. Alternatively, the applicant may submit an approved Certificate of Appropriateness for the furnishings or other decorative materials as part of the permit application. In no event shall such Certificate of Appropriateness permit lesser standards than are required by this section.

**Sec. 18-194. - Prohibited acts.**

(a) No merchant, vendor, business or property owner shall:

- (1) Sublicense the encroachment area separately to non-occupants of the premises.
- (2) Vend or display without the insurance coverage specified.
- (3) Sound or permit the sounding of any device on the public property that produces a loud noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device in violation of noise regulations, as outlined in Sec. 12-9 of this ordinance.
- (4) Fail to regularly and promptly pick up, remove and dispose of all trash or refuse left by the business on the public right-of-way or public property.
- (5) Fail to maintain all encroachments in a state of good repair and visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.
- (6) Place any rug or other groundcover on any portion of the temporary encroachment area.
- (7) Store, park or leave any stand or items of merchandise overnight on any street or sidewalk, except for outdoor dining areas, which may be kept in the permitted area at the permittee's risk.
- (8) Store, park or leave any vehicle, truck or trailer within the temporary encroachment area.
- (9) Block access to fire hydrants or fire department connections (FDC).

(b) The encroachment permit is a temporary license that may be denied, suspended or revoked for any conduct that is contrary to the provisions of this article or for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the operator's or the public's health, safety or welfare. No property right is created by this article, and the decision of the city manager shall be final.

**Sec. 18-195. - Form and conditions of permit.**

The permit required by section 18-192 of this article shall be issued on a form deemed suitable by the administrator. In addition to naming the permittee and any other information deemed appropriate by the administrator, the permit shall contain the following conditions:

- (1) Each permit shall be effective for one (1) year from the date of issuance, subject to annual renewal, unless revoked or suspended prior to expiration. When a permit is revoked, the prorated fee for any full quarter year remaining shall be refunded. No fees will be refunded for periods of suspension.
- (2) The permit issued shall be personal to the permittee only and shall not be transferable in any manner.
- (3) The permit may be suspended by the administrator when necessary to clear the public property for public safety for a community or special event authorized by the city. All items shall be removed by the permit holder when requested by the city.
- (4) The administrator may require the temporary removal of items within the encroachment area when street, sidewalk, common area or utility repairs necessitate such action.
- (5) The permit shall be specifically limited to the area shown on the plan and elevation drawings included with the permit application. As a condition of approval, the city may reduce and otherwise reconfigure the proposed area and the number of requested encroachments within the permitted area.
- (6) The encroachment area covered by the permit and all encroachments within it shall be maintained in a neat and orderly appearance at all times, kept safe and in good repair, and the area shall be cleared of all debris on a periodic basis during the day and again at the close of each business day.
- (7) No advertising is permitted (except for the posting of prices) on any stand or item, except to identify the name of the product.
- (8) No tables, chairs, fencing or any other movable items shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area. Support poles for awnings are not considered a movable item.
- (9) No additional outdoor seating authorized under this article shall be used for calculating seating requirements pertaining to the location of, application for or issuance of an ABC license for any establishment, or be used as the basis for computing required seating for restaurants and dining rooms, or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.
- (10) The issuance of a permit does not grant or infer vested rights to use of the area by the permittee. The City retains the right to deny the issuance of a permit or the renewal of a permit for any reason. In addition, the City retains the right to suspend or repeal a permit at any time and for any reason.
- (11) The city retains the right to suspend the privilege of using glass containers within the encroachment area during major festivals and events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers or the general public. Any violation of state or local laws may also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the encroachment permit.

(12) The serving and consumption of alcoholic beverages in outdoor dining areas is limited to enclosed areas.

(13) Outdoor heaters may be utilized upon the review and written approval of the Graham Fire Department.

(14) The city may require the posting or placement of the permit and relevant notices to facilitate the administration and enforcement of this article.

**Sec. 18-196. - Denial, suspension or revocation of permit; removal of property by city.**

(a) Grounds for denial, suspension or revocation; removal of property by city. The administrator may deny, revoke or suspend a permit issued under this article at any time for any business authorized in the city if it is found that:

- (1) Any necessary business or health permit has been suspended, revoked or canceled.
- (2) The permittee does not have insurance in force that is correct and effective in the minimum amount required by the city.
- (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the encroachment. Such decision shall be based upon findings of the administrator that the minimum width of pedestrian travel is insufficient under existing circumstances and represents a danger to the health, safety or general welfare of pedestrians or vehicular traffic.
- (4) The permittee has failed to correct violations of this article or conditions of his permit upon receipt of the administrator's notice of the violation delivered in writing to the permittee.
- (5) The permittee has failed to take positive actions to prohibit violations from reoccurring.
- (6) The permittee has failed to make modifications upon receipt of the administrator's notice to make such modifications delivered in writing to the permittee.

Tables, chairs and other vestiges of the business may be removed by the department of public works, and a reasonable fee charged for labor, transportation and storage, should the permittee fail to remove the items within thirty-six (36) hours of receipt of the administrator's final notice to do so for any reason provided for under this article. If the action is taken based on subsection (a)(2) or (3) of this section, the action shall become effective upon the receipt of such notice and the permittee shall have four (4) hours to remove the items.

(b) Notice of denial or revocation. Upon denial or revocation, the administrator shall give notice of such action to the applicant or the permittee, in writing, stating the action that has been taken and the reason therefore. The action shall be effective upon giving such notice to the permittee.

(c) Appeals. The permittee shall have the right of appeal and shall give notice of appeal within five (5) working days from receipt of notice. An appeal does not stay the denial or revocation of the

encroachment permit. The hearing shall be held within two (2) working days from the date of notice of the request. The permittee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. Formal rules of evidence shall not apply. The city manager or his designee shall notify the permittee or applicant of his determination in writing.

**Sec. 18-197. - Penalty.**

(a) Penalty for failure to obtain a permit.

(1) Any owner, occupant or other responsible person who places encroachments on the sidewalk for which a permit is required by this article, without first obtaining the permit required by this article, shall submit an application for a permit within forty-eight (48) hours of written notice for failure to obtain a permit. Failure to submit an application within the specified time period shall subject the offender to a civil penalty in an amount equal to that of the fee for the permit required by this article, plus an additional twenty-five dollars (\$25) for each twenty-four (24) hour period thereafter until a complete application is submitted.

(2) If, in the opinion of the administrator, the offending encroachments pose a threat to public health or safety, the administrator may require that the encroachments be removed within four (4) hours of receipt of such notice. Failure to remove said encroachments within the specified time period shall subject the offender to a civil penalty in the amount of two hundred dollars (\$200.00), plus an additional two hundred dollars (\$200.00) for each four (4) hour period thereafter until all offending encroachments are removed.

(3) Where the same owner, occupant or person responsible has been given notice for the same violation at the same location within the previous one hundred eighty (180) days, such requirements of written notice may be waived and legal proceedings commenced immediately.

(b) Penalty for violation of a permit issued pursuant to this article. Any violation of this article shall subject the offender to a civil penalty in the amount of two hundred dollars (\$200.00). Any duly authorized local government official is authorized to issue this civil citation and the violator shall pay the penalty at city hall within ten (10) days of receipt. The failure of such violator to pay the civil penalty within the specified time shall subject such violator to a civil action to collect all penalties and costs for said violation and any civil penalty that has not been paid which delinquent notice was sent shall carry an additional late payment penalty of twenty-five (\$25.00). Continued violation or continuing violations shall subject the violator to separate, distinct and successive civil penalties.

(c) In addition to or in lieu of the foregoing remedies, violations of this section may be enforced by any one (1) or more of the remedies authorized by the provisions of G.S. 14-4 or G.S. 160A-175.

# APPENDIX B. HISTORIC DISTRICT DESIGN GUIDELINES FOR OUTDOOR DISPLAYS, DINING AND OTHER TEMPORARY ENCROACHMENTS

These guidelines are to be used by City of Graham staff to approve permits for outdoor displays, dining and other temporary encroachments within the Courthouse Square Historic District. The guidelines described below are in addition to those prescribed in the Code of Ordinances. Any applicant who proposes an outdoor display, dining or other temporary encroachment that does not meet the guidelines described below may apply for a Certificate of Appropriateness.

- All outdoor furniture, lighting, barriers, fixtures and other decorative materials should be made of the same complimentary quality materials.
- Landscaping and planters are encouraged to enhance the appearance of outdoor dining areas.

## **Awnings, Umbrellas and Upholstered Surfaces**

- Awnings, umbrellas and all upholstered surfaces must be made of canvas or a similar woven material that meets all local, state and federal safety and fire standards. Vinyl or plastic is prohibited. Metal awnings may be permitted with a Certificate of Appropriateness.
- Only burgundy, hunter green or a closely related color shall be approved for awnings, umbrellas or other upholstered surfaces. These shall be solid colored or striped.
- Multiple awnings on one building should have a consistent design and material and be complimentary in color and pattern.
- The placement of awnings should not obstruct major architectural features.
- Awnings should be compatible with the structure in size, scale and style.
- Awnings should generally be mounted within the window or entry opening, directly on the frame. If this is not possible, they should be attached just outside the opening. On masonry structures, attachments for awnings should be made in the mortar joints and not in the brick itself.
- Flat panel, shed or slanted awnings are encouraged. Barrel shaped awnings or canopies are not appropriate? ...OR... Awning shapes should be relatively simple?
- Retractable and roll-down awnings are encouraged?
- Awnings on upper floors shall project no further than three (3) feet from the face of the building, should be no higher than half the height of the window opening, and should fill the width of the window opening but not extend past it?

## **Furniture**

- All outdoor furniture, including tables, chairs, umbrella bases and poles, benches, trash receptacles and other street furniture, should be compatible with the historic character of the district in size, scale, material and color.
- All outdoor furniture must have a uniform or complimentary design, color and material. It may be colored or of a natural unpainted material (i.e. wood or metal). White plastic or any fluorescent or other strikingly bright or vivid colors are prohibited.

## **Lighting**

- Lighting fixtures and poles should be compatible in scale and materials with the structure, landscape and neighboring setting.

- It is not appropriate to introduce period lighting fixtures from an era earlier than the historic building in an attempt to create a false historic appearance.

**Barriers or Delineators**

- Barriers or delineators should be made of wrought iron or wood. Metal may also be appropriate.
- The style of the barrier or delineator should complement the architecture of the building façade and the style of the outdoor dining furniture.

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