

# CAROLINA BEACH

Town Council Regular Meeting

Tuesday, November 14, 2023 – 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



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## AGENDA

### CALL TO ORDER

**INVOCATION GIVEN BY PASTOR JONATHAN BOWLING OF CAROLINA BEACH PRESBYTERIAN CHURCH  
FOLLOWED BY THE PLEDGE OF ALLEGIANCE**

### ADOPT THE AGENDA

### CONSENT AGENDA

1. Resolution of Support for the NCDOT Application for a Federal Grant to Rebuild the Cape Fear Memorial Bridge
2. Budget Amendments/Transfers

### SPECIAL PRESENTATIONS

3. Presentation of Annual Financial Audit
4. Presentation by the Volunteer Income Tax Assistance (VITA) Program Manager and their Volunteers
5. Events Update by Tim Murphy
6. Manager's Update

### PUBLIC COMMENT

*Public Comment allows the public the opportunity to address Town Council. Please direct your comments to Council only. Speakers should restrict comments to no more than three minutes. Items or questions presented during this time will not be discussed by Council. However, the topic may be deferred to Town staff or a Town committee for follow-up. Please be sure to state your name and address, and speak directly into the microphone for those watching online.*

### ITEMS OF BUSINESS

7. Text Amendment to Chapter 34 – Streets, Sidewalks and Rights-of-Way, Article III. Obstructions to amend sidewalk café encroachment allowances.  
  
Applicant: Town of Carolina Beach
8. Appropriate funds for the acquisition of 1808 & 1810 Canal

## **COUNCIL COMMENTS**

### **CLOSED SESSION**

9. Closed Session – Real Estate (R08807-013-005-000 and R08807-013-004-000)  
And Attorney/Client Privilege Case # 23CV003744 Carolina Beach Landholdings LLC vs The  
Town of Carolina Beach

### **ADJOURNMENT**



# AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council 11/14/2023

**SUBJECT:** Resolution of Support for the NCDOT Application for a Federal Grant to Rebuild the Cape Fear Memorial Bridge

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**BACKGROUND:**

NCDOT has been authorized to pursue a Bridge Investment Program grant for the replacement of the Cape Fear Memorial Bridge. The applications for the grant are due to USDOT- Federal Highway Administration on November 27, 2023.

To strengthen NCDOT’s application, resolutions of support are requested from member jurisdictions that demonstrate community support for this critical transportation investment. This is the MPO Board’s top unfunded priority.

**ACTION:**

Adopt Resolution 23-2299 supporting the application.

# Resolution



Town of Carolina Beach  
Town Council

## **RESOLUTION NO. 23-2299**

RESOLUTION IN SUPPORT OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION'S (NCDOT) APPLICATION TO THE U.S. DEPARTMENT OF TRANSPORTATION'S BRIDGE INVESTMENT PROGRAM (BIP) FOR THE REPLACEMENT OF THE CAPE FEAR MEMORIAL BRIDGE

WHEREAS, the Cape Fear Memorial Bridge, linking US 17, US 76, and US 421 over the Cape Fear River, has been an indispensable conduit for regional transportation and economic development;

WHEREAS, the replacement of the bridge adds an additional lane of capacity for the projected 94,900 vehicles per day that will travel it in 2050 compared to the 2023 base year counts of 65,200 vehicles per day.

WHEREAS, the replacement of the bridge also adds a 15' Multi-use path which will serve as the only bicycle and pedestrian connection between New Hanover County and Brunswick County, which does not currently exist today.

WHEREAS, the bridge is a critical element in facilitating freight movement to and from the Port of Wilmington, ranked number 1 as the most productive port in North America and 44<sup>th</sup> in the world for 2022, underlining its importance to the regional economy;

WHEREAS, assessments from the 2021 Routine Inspection Report designate the bridge as functionally obsolete;

WHEREAS, given the repeated financial investments for its rehabilitation, including \$15M in 2019 and an anticipated \$15M-\$20M in 2024, accompanied by a 20-week one-direction (10-weeks in each direction) traffic shutdown, there exists a pressing imperative for a holistic solution;

WHEREAS, the proposed alternatives and design considerations harmonize with both regional and statewide infrastructure development goals, ensuring sustained and efficient traffic flow on one of North Carolina's key Strategic Transportation Corridors;

WHEREAS, the most recently available crash data, drawn from the bridge and its contiguous roadways, underscore the urgency of the situation, with trends consistently surpassing statewide crash metrics. The project is poised to mitigate these crash rates;

WHEREAS, beyond ameliorating current traffic and safety challenges, the replacement of the Cape Fear Memorial Bridge stands to stimulate regional economic resurgence, amplify the operational efficacy of the Port of Wilmington, and foster economic opportunities in neighboring underserved areas;

WHEREAS, this initiative holds pronounced potential environmental dividends, including a marked reduction in greenhouse gas emissions and bolstered infrastructure resilience against natural adversities.

# Resolution



Town of Carolina Beach  
Town Council

**RESOLUTION NO. 23-2299**

NOW, THEREFORE, BE IT RESOLVED, that the Town of Carolina Beach unequivocally expresses its support and endorsement for the NCDOT's application for Federal Discretionary Grants for the much-needed replacement of the Cape Fear Memorial Bridge.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Debbie Hall, Finance Director

**DEPARTMENT:** Finance

**MEETING:** Town Council –11/14/2023

**SUBJECT:** Budget Amendments/Transfers

### **BACKGROUND:**

I received several budget amendments and/or transfer requests. As you know, transfers require only your notification whereas amendments require your approval. Listed below you will find a description of the amendments and/or transfers. I have also attached a copy of the supporting documentation for the appropriation.

### **Appropriations:**

Appropriate \$5,634.59 left in the Fire Apparatus project fund to account 10-409-015 General Fund Debit Service to apply to the interest payment for the loan.

### **Transfers:**

Transfer \$10,000 from account 30-811-020 WWC M&O Infrastructure to account 30-810-016 WWTP M&O Equipment to cover repairs at the Wastewater Treatment Plant.

Transfer \$15,000 from account 30-811-020 WWC M&O Infrastructure to account 30-810-047 WWTP Plant Renovations to cover repairs to the Wastewater Treatment chlorine building.

Transfer \$15,000 from account 30-812-045 Water Contract Services to account 30-812-026 Water M&O Materials to cover water system repairs.

Transfer \$341,801.63 from departmental -004 COLA accounts to the -002 Wage accounts for the General Fund; transfer \$102,691.37 from departmental -004 COLA accounts to the -002 Wage accounts for the Utility Fund to cover the Cost-of-Living increase implemented in July.

### **BUDGET IMPACT:**

Appropriation will increase the general fund fund balance.

### **ACTION REQUESTED:**

Approve the budget amendments as presented by the Finance Director.

Receivable Category	Current Due
Interest	-5,634.59
Late Charges	0.00
Fees	0.00
Escrows	0.00
Principal	0.00
Totals	-5,634.59

Action	DE	DATE	DATE	NUMBER	SPRS.	TRAN-AMT DESCRIPTION
	02	*09/25/23	09/25/23	PFCL05E0UT		5,634.59 Wire Pymt

**Note: \$5,634.59 balance left in Fire Apparatus Project Fund was applied towards interest on the loan.**

Lynn Barbee  
*Mayor*

Joe Benson  
*Council Member*

Deb LeCompte  
*Council Member*



Jay Healy  
*Mayor Pro Tem*

Mike Hoffer  
*Council Member*

Bruce Oakley  
*Town Manager*

TOWN OF CAROLINA BEACH  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428

## BUDGET TRANSFER REQUEST

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Nov 7th, 2023

**Budget transfer amount:** \$ 10,000

**From:** 30-811-020 (WWC)

**To:** 30-810-016 (WWTP PLANT MAINT and REPAIR)

**Explanation:** Cover repairs WWTP

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**



Lynn Barbee  
Mayor

Joe Benson  
Council Member

Deb LeCompte  
Council Member



Jay Healy  
Mayor Pro Tem

Mike Hoffer  
Council Member

Bruce Oakley  
Town Manager

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1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428

## BUDGET TRANSFER REQUEST

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Nov 7th, 2023

**Budget transfer amount:** \$ 15,000

**From:** 30-811-020 (WWC)

**To:** 30-810-047 (WWTP PLANT RENO)

**Explanation:** Cover repairs WWTP Chlorine building

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

Lynn Barbee  
Mayor

Joe Benson  
Council Member

Deb LeCompte  
Council Member



Jay Healy  
Mayor Pro Tem

Mike Hoffer  
Council Member

Bruce Oakley  
Town Manager

TOWN OF CAROLINA BEACH  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428

## BUDGET TRANSFER REQUEST

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Nov 7th, 2023

**Budget transfer amount:** \$ 15,000

**From:** 30-812-045 (Contract Services)

**To:** 30-812-026 (Water Maint and Repair)

**Explanation:** Cover repairs water system

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

BUDGET AMENDMENTS/TRANSFERS				
Date	DESCRIPTION	GL #	DEBIT	CREDIT
11/14/2023	Transfer budgeted COLA monies to wage	10-420-002	28,357.48	
	line items.	10-420-004		28,357.48
		10-430-002	5,914.09	
		10-430-004		5,914.09
		10-440-002	14,651.62	
		10-440-004		14,651.62
		10-450-002	13,219.70	
		10-450-004		13,219.70
		10-491-002	24,288.74	
		10-491-004		24,288.74
		10-510-002	120,839.55	
		10-510-004		120,839.55
		10-520-002	3,537.80	
		10-520-004		3,537.80
		10-530-002	63,720.72	
		10-530-004		63,720.72
		10-550-002	5,944.59	
		10-550-004		5,944.59
		10-580-002	33,872.44	
		10-580-004		33,872.44
		10-620-002	25,261.13	
		10-620-004		25,261.13
		10-650-002	2,193.77	
		10-650-004		2,193.77
	<b>General Fund Totals</b>		<b>341,801.63</b>	<b>341,801.63</b>
		30-800-002	20,745.48	
		30-800-004		20,745.48
		30-810-002	17,700.78	
		30-810-004		17,700.78
		30-811-002	30,542.52	
		30-811-004		30,542.52
		30-812-002	6,249.90	
		30-812-004		6,249.90
		30-900-002	27,452.69	
		30-900-004		27,452.69
	<b>Utility Fund Totals</b>		<b>102,691.37</b>	<b>102,691.37</b>
	<b>Total Transfers</b>		<b>444,493.00</b>	<b>444,493.00</b>

004 Line Item Utilized - July 1 2023

<u>Cost Center</u>	<u>Department Name</u>	<u>COLA Budget</u>	<u>COLA Utilized</u>	<u>Remaining</u>	<u>Notes</u>
10-420-004	Executive	32,158.00	(28,357.48)	\$3,800.52	Extra Money from unfilled PIO Position
10-430-004	Clerk	5,914.00	(5,914.09)	(\$0.09)	
10-440-004	Finance	18,944.00	(14,651.62)	\$4,292.38	Extra Money from unfilled Finance Position
10-450-004	Human Resources	13,221.00	(13,219.70)	\$1.30	
10-491-004	Planning	29,070.00	(24,288.74)	\$4,781.26	Extra Money from unfilled Building Inspector
10-510-004	Police	123,492.00	(120,839.55)	\$2,652.45	Extra Money from unfilled PO1 Position and Turnover
10-520-004	Ocean Rescue	25,815.00	(3,537.80)	\$22,277.20	Extra Money for Spring Recruitment Needs
10-530-004	Fire	64,102.00	(63,720.72)	\$381.28	
10-550-004	Marina	5,611.00	(5,944.59)	(\$333.59)	Difference between budgeted 2 PT positions vs actual 1 FT position
10-580-004	Environmental	41,016.00	(33,872.44)	\$7,143.56	Two new unfilled Environmental positions plus unfilled GMW1 position
10-620-004	Parks and Rec	24,934.00	(25,261.13)	(\$327.13)	Difference caused by PT employees receiving COLA
10-650-004	Boardwalk	2,372.00	(2,193.77)	\$178.23	
30-800-004	Water/Sewer Admin	20,793.00	(20,745.48)	\$47.52	
30-810-004	WWTP	17,702.00	(17,700.78)	\$1.22	
30-811-004	WWC	30,076.00	(30,542.52)	(\$466.52)	
30-812-004	Water	6,250.00	(6,249.90)	\$0.10	
30-900-004	Stormwater	27,693.00	(27,452.69)	\$240.31	
		<b>489,163.00</b>	<b>(444,493.00)</b>	<b>44,670.00</b>	



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Debbie Hall, Finance Director

**DEPARTMENT:** Finance

**MEETING:** Town Council – 11/14/2023

**SUBJECT:** Presentation of Annual Financial Audit

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**BACKGROUND:**

Victor Blackburn from Bernard Robinson and Company will present a summary of the annual financial audit to Council.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council 11/14/2023

**SUBJECT:** Presentation by the Volunteer Income Tax Assistance (VITA) Program Manager and their Volunteers

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**BACKGROUND:**

The New Hanover County Human Services Program Coordinator Cully Shelton will present information on the Volunteer Income Tax Assistance Program and recognize the volunteers that serve this community.

**ACTION:**

Presentation only. No action needed.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Tim Murphy

**DEPARTMENT:** Parks and Rec

**MEETING:** Town Council Meeting 11/14/2023

**SUBJECT:** Events Update by Tim Murphy

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**BACKGROUND:**

Tim Murphy will give an update on the upcoming events.

**ACTION REQUESTED:**



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Bruce Oakley, Town Manager

**DEPARTMENT:** Executive

**MEETING:** Town Council 11/14/2023

**SUBJECT:** Manager's Update

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**BACKGROUND:**

Town Manager Bruce Oakley will give an update on current and future projects.





## AGENDA ITEM COVERSHEET

**PREPARED BY:** Gloria Abbotts, Sr Planner      **DEPARTMENT:** Planning & Development

**MEETING:** Town Council November 14<sup>th</sup>, 2023

**SUBJECT:** Text Amendment to Chapter 34 – Streets, Sidewalks and Rights-of-Way, Article III. Obstructions to amend sidewalk café encroachment allowances.

Applicant: Town of Carolina Beach

### **BACKGROUND:**

Town Council directed staff to amend the ordinance for sidewalk cafes. The concerns included removal of encroachments, size and extent of encroachments, barriers, purpose, and indemnification. A meeting was held with staff, the Pleasure Island Chamber of Commerce and the 13 business owners on November 9<sup>th</sup>. Staff will present any comments, issues, concerns.

### **Proposal:**

The text amendment clarifies the purpose and allowances of sidewalk cafes and other obstructions within the public right-of-way. Ther right-of-way is multimodal and has town utilities. The purpose of sidewalk cafes and other obstructions in the public right-of-way is to increase pedestrian activities, by also balancing uses and insuring they are temporary and do not interfere with safety and accessibility. The permit shall be issued annually. Each year the permittee shall sign an indemnification agreement. The proposed fee will be \$100 plus \$2 per square foot of the encroachment area.

All encroachments utilized for a sidewalk café shall be removed upon 24-hour notice from the town. Removal of encroachments must happen for scheduled maintenance activities, such as cleaning and power washing. Failure to remove encroachments will result in a \$100 fine. For corner lots, encroachments shall not extend beyond the façade of the building. The intent of this regulation for corner lots is to ensure pedestrian accessibility and visibility along the corner. The town will install medallions along the boardwalk to ensure code compliance and provide a visual guide of the maximum allowable encroachments and area for alcoholic beverage consumption.

Barriers are required if patrons are drinking and being served alcohol per state statute. The existing ordinance requires patrons to remain seated while drinking alcoholic beverages. Barrier design standards are proposed and shall be:

1. A minimum of 36" tall and a maximum of 48".
2. Freestanding, stable, and removable.
3. The base shall be flat footed and square, no more than ½" in height.
4. No more than two rigid poles shall be used to connect each barrier.
5. Signage may be attached in accordance with the zoning ordinance.

**ACTION REQUESTED:**

Consider recommending approval or denial of the text amendment.

Staff recommends approval of the text amendment as proposed.

**MOTION:**

Approval – to amend Chapter 34, Article III. Obstructions and the Town Rates and Fee Schedule.

Denial – to amend Chapter 34, Article III. Obstructions and the Town Rates and Fee Schedule.

# 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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Town of Carolina Beach  
Town Council

- (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:

Town of Carolina Beach  
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Town of Carolina Beach  
Town Council

*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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Town of Carolina Beach  
Town Council

## 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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Town of Carolina Beach  
Town Council

- (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

Town of Carolina Beach  
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# Ordinance 23-1217

Town of Carolina Beach  
Town Council

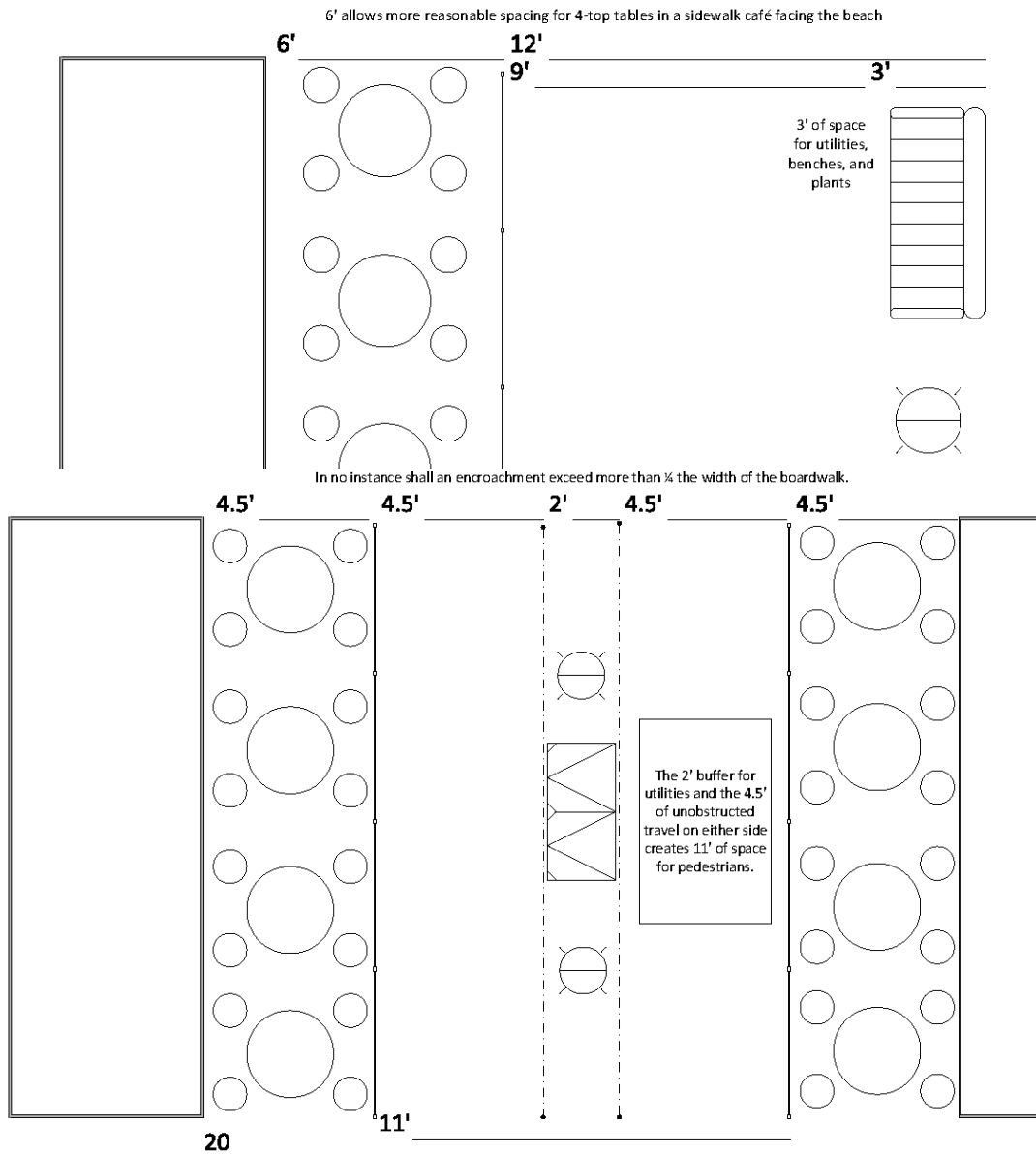
town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to removed encroachments under any circumstances. Permitted encroachments may take place adjacent to the business structure and shall not exceed the width of the business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



# Ordinance 23-1217

Town of Carolina Beach  
Town Council



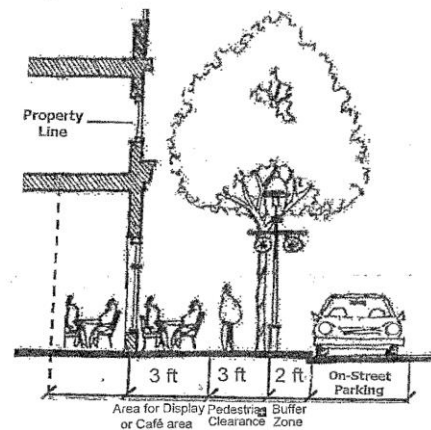
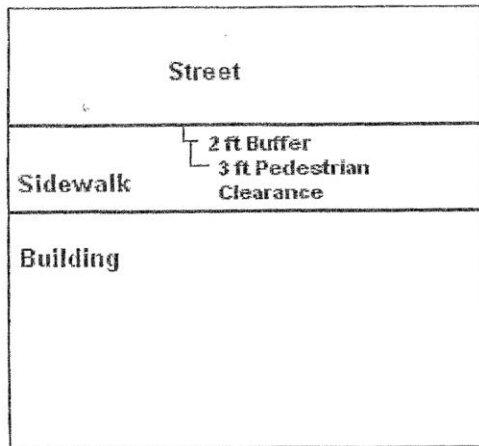
# Ordinance 23-1217

Town of Carolina Beach  
Town Council

~~(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.



~~(f)~~(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.

~~(g)~~(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:

Town of Carolina Beach  
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# Ordinance 23-1217

Town of Carolina Beach  
Town Council

- (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.
- (3) The premises of the encroachment shall be clearly delineated with ~~stanchions~~ barriers, pursuant to G.S. 18B, 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. 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 poles shall be utilized to connect each barrier. There shall be no more than two rigid poles connecting each barrier.
  - iv. Signage: Temporary signage may be utilized in between barriers in accordance with Chapter 40 Article VIII. – Sign Regulations.
- (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)

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Town of Carolina Beach  
Town Council

## 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:
- (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 ~~3½~~ 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 ~~3½~~ 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

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# Ordinance 23-1217

Town of Carolina Beach  
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(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 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;

# Ordinance 23-1217

Town of Carolina Beach  
Town Council

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.

**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

Town of Carolina Beach

Ordinance No. 23-

# Ordinance 23-1217

Town of Carolina Beach  
Town Council

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

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Debbie Hall, Finance Director

**DEPARTMENT:** Finance

**MEETING:** Town Council – 11/14/2023

**SUBJECT:** Appropriate funds for the acquisition of 1808 & 1810 Canal

### **BACKGROUND:**

For the past 9 years, the Town has been leasing the properties at 1808 & 1810 Canal for use as a public parking lot. The property owners informed staff they wish to sell the parcels and asked if the Town would be interested in purchasing the properties. A letter of intent to purchase was presented to the owner's contingent on the Town being able to obtain a grant to assist with the purchase. Town Council authorized staff to pursue a CAMA Grant to assist with the acquisition cost. The grant was approved for a purchase price of \$1,000,000 with \$600,000 CAMA Grant (60%) and \$400,000 Town match (40%).

### **Appropriations:**

Appropriate \$1,005,000 to account 10-570-074 Parking Capital Over \$10,000 from the General Fund fund balance to cover the purchase price plus estimated closing cost. The target closing date is December 15, 2023. The Town's fund balance will be reimbursed when the grant funds are received. In lieu of financing \$400,000 at a 7% interest rate, the Town's match will come out of funds that will reimburse the purchase of Freeman Park.

### **BUDGET IMPACT:**

The appropriation will affect the budget until grant funds are received.

### **ACTION REQUESTED:**

- Accept the grant award.
- Approval Grant Ordinance number 23-1216 establishing a budget for the acquisition.





**GRANT ORDINANCE NO. 23-1216  
AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET CREATING A  
BUDGET APPROPRIATION FOR PURCHASE OF PROPERTY LOCATED AT 1808 &  
1810 CANAL DRIVE**

The Town Council of the Town of Carolina Beach, North Carolina, doth ordain:

**SECTION ONE:**

That the Fiscal Year 2023-2024 Budget for the Town of Carolina Beach is hereby amended to include the expenditures associated with CAMA Public Waterway Access Grant for purchase of 1808 & 1810 Canal Drive by amending the following General Fund Budget Ordinance:

<u>Account Code</u>	<u>Description</u>	<u>Previous</u>	<u>Amended</u>	<u>Changed</u>
10-570-074	Capital Over \$10,000	\$	<u>\$1,005,000</u>	+\$1,005,000
<b>TOTAL</b>			<b>\$1,005,000</b>	

**SECTION TWO:**

That the Fiscal Year 2023-2024 Budget for the Town of Carolina Beach is hereby amended to include the revenue associated with CAMA Public Waterway Access Grant for purchase of 1808 & 1810 Canal Drive by amending the following General Fund Budget Ordinance:

<u>Account Code</u>	<u>Description</u>	<u>Previous</u>	<u>Amended</u>	<u>Changed</u>
10-395-600	CAMA Public Access Grant		\$ 600,000	+\$ 600,000
10-399-000	Appropriated Fund Balance		<u>\$ 405,000</u>	+\$ 405,000
<b>TOTAL:</b>			<b>\$1,005,000</b>	

**SECTION THREE:**

A copy of this Ordinance shall be furnished to the Finance Officer for direction in disbursement of Town funds and for public inspection.

Duly adopted this 14th day of November 2023

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee Ward, Town Clerk

## LETTER OF INTENT TO PURCHASE REAL ESTATE

August 24, 2023

To: North Pier Associates, LP (c/o Mr. Harry L. Kraly, Gen. Partner)

Re: Possible acquisition by Buyer (the "Transaction") of the following real property owned by Seller (the "Property"):

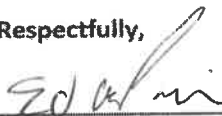
- R-08807-013-005-000 (1808 Canal Drive, Carolina Beach)
- R-08807-013-004-000 (1810 Canal Drive, Carolina Beach)
- R-08807-013-009-000 (incorrect tax office address of 1800 Carolina Beach Avenue North)

This Letter of Intent (this "Letter") sets forth the mutual interest of the Town of Carolina Beach (the "Buyer"), and North Pier Associates, Ltd. Partnership (the "Seller") to include certain terms and conditions in a definitive purchase agreement (the "Purchase Agreement") regarding the Property. The Purchase Agreement will contain such representations, warranties, conditions, covenants, indemnities and terms as the parties may agree upon. The parties agree that their goal, intent and interest is to bring about the Transaction pursuant to a binding Purchase Agreement.

1. **Purchase Price.** The purchase price for the Transaction shall be \$1,000,000 (the "Purchase Price"), payable by Buyer in cash or good funds at closing.
2. **Personal Property.** The sale of the Property shall NOT include personal property or fixtures.
3. **Seller's Representations.** Seller represents and warrants that at the Closing, Seller will convey to Buyer such title as Seller has in the Property. (The parties acknowledge an easement in favor of North Wind Homeowners Assn. running north-south across the Property and a claim of easement by North Wind Homeowners Assn. to an easement running east-west across the northern portion of the Property.)
4. **Exclusivity of this Letter.** Seller agrees that it will not negotiate directly or indirectly with any other party concerning the sale of the Property.
5. **Confidentiality.** The parties agree to apply strict confidentiality to the existence and the contents of this Letter and to any information shared between the parties or obtained pursuant to this Letter.
6. **Governing Law.** This Letter and all matters related thereto shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to its conflict of laws principles.
7. **Termination.** If the parties have not entered into a formal Purchase Agreement by December 31, 2023, this Letter of Intent will automatically terminate on that date unless extended by the parties.
8. **Non-binding.** This Letter is intended only as a reflection of the intention of the parties, and neither this Letter nor its acceptance shall constitute or create any legally binding or enforceable obligation on any party except with respect to the paragraphs regarding Exclusivity of this Letter, Confidentiality, Governing Law and Termination hereof.

If the foregoing terms and conditions are acceptable, please sign and return this Letter to the undersigned.

Very Respectfully,



Agreed to by Town of Carolina Beach,  
Ed H. Parvin, Deputy Town Manager

Agreed to and accepted by Seller:



Harry L. Kraly as General Partner of Seller

# RESOLUTION



Town of Carolina Beach  
Town Council

Item 8.

## RESOLUTION NO. 23-2297

### RESOLUTION TO COMPLETE THE FINAL CAMA GRANT SUBMITTAL: ACQUISITION OF 1800 Carolina Beach Avenue North, 1808 & 1810 Canal.

**WHEREAS**, the projected budget is \$1,000,000 with a proposed cost share of 60% CAMA Grant at \$600,000 and 40% Town match at \$400,000; and

**WHEREAS**, The project entails the acquisition of parcels 1800 Carolina Beach Avenue North, 1808 & 1810 Canal Drive, and

**WHEREAS**, the completed project will be an authorized ADA public waterway access point; and

**WHEREAS**, the date for submittal of the final grant application is August 28, 2023; and

**NOW, THEREFORE BE IT RESOLVED** by the Town Council of Town of Carolina Beach, North Carolina adopts the following resolution authorizing the Town's staff to move forward with submittal of the full application to CAMA

Albert L. Barbee, Mayor

Attest: Kimberlee Ward, Town Clerk

Town of Carolina Beach

Resolution NO. 23-2297





STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

ROY COOPER  
GOVERNOR

November 1, 2023

The Hon. Lynn Barbee, Mayor  
Town of Carolina Beach  
1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428

Dear Mayor Barbee:

I am pleased to announce that Carolina Beach has been awarded a public access grant of \$600,000 through the North Carolina Coastal Management Program.

The Division of Coastal Management in the North Carolina Department of Environmental Quality will be administering this grant. If you have any questions concerning this grant, please contact Mike Christenbury in the Wilmington Regional Office at (910) 796-7426

Congratulations on being selected for this grant. I hope these funds will help as you work to provide better public access to our beautiful coastal beaches and waterways.

Sincerely,

A handwritten signature in black ink that reads "Roy Cooper". The signature is fluid and cursive, with the first letters of "Roy" and "Cooper" being capitalized and prominent.

Roy Cooper

RAC/swh

cc: Senator Michael V. Lee  
Rep. Charles W. Miller  
Braxton C. Davis, Division of Coastal Management



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Council Meeting 11/14/2023

**SUBJECT:** Closed Session – Real Estate (R08807-013-005-000 and R08807-013-004-000)  
And Attorney/Client Privilege Case # 23CV003744 Carolina Beach Landholdings  
LLC vs The Town of Carolina Beach

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**RECOMMENDED MOTION:**

Closed session to discuss a real estate matter in accordance with NCGS 143-318.11(a)(3) and (5). The property being discussed is R08807-013-005-000 and R08807-013-004-000. The case being discussed is 23CV003744 Carolina Beach Landholdings LLC vs The Town of Carolina Beach.