

First Reading 6/01/2015

Second Reading 6/15/2015

ORDINANCE 2015- 11

AN ORDINANCE TO AMEND CHAPTER 62, ENTITLED PEDDLERS AND SOLICITORS, OF THE CODE OF THE TOWN OF OCEAN CITY, MARYLAND

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF OCEAN CITY THAT CHAPTER 62 OF THE CODE OF THE TOWN OF OCEAN CITY, MARYLAND, ENTITLED PEDDLERS AND SOLICITORS, BE AND HEREBY IS REPEALED.

IN ITS STEAD, CHAPTER 62, ENTITLED BOARDWALK PERFORMING AND VENDING, IS HEREBY ENACTED, AS FOLLOWS:

**Sec. 62-1 Definitions.**

(a) **Boardwalk.** The Boardwalk is a manmade promenade that runs parallel to the beach and is designated or referred to as "Atlantic Avenue" or the "Boardwalk." The Boardwalk runs from South Second Street to 27<sup>th</sup> Street. A map depicting the Boardwalk is available for inspection and copying at the Office of the Town Clerk, located at 301 N. Baltimore Avenue, Ocean City, MD 21842.

(b) **Designated Space or Designated Spaces.** A Designated Space or Designated Spaces are the areas on the Boardwalk demarcated by the Town and located on the Street Ends between and including South First Street and Ninth Street, except the street ends at North Division Street and Dorchester Street. These Designated Spaces are to be marked as determined by the Director. A map depicting the Designated Spaces is available for inspection and copying at the Office of the Town Clerk.

(c) **Director.** The Director shall mean the Director of the Department of Public Works of the Town of Ocean City, Maryland.

(d) **Expressive Material.** Expressive Material means newspapers, periodicals, books, pamphlets or other similar written material. Expressive materials also means cassette tapes, compact discs, digital video disks, paintings on paper or fabric, photographs, sculpture and prints, but only if they have been created or composed by a Performer or Vendor. Expressive Material shall not include the touching of other persons as in hair-braiding, hair-feathering, nail painting or any other touching, or the application of substances to other persons, including, but not limited to, paints, dyes and inks.

(e) **Generator or Generators.** Generator or Generators are machines designed to produce electrical energy that are powered by combustible fuels, including, but not limited to, gasoline and propane.

(f) **Merchant or Merchants.** Merchant or Merchants are persons who sell food, beverages, merchandise, services, or offer amusements from traditional brick and mortar establishments on properties adjacent to the Boardwalk.

(g) **Perform, Performing, Performance or Performances.** Perform, Performing, Performance or Performances mean to engage in playing a musical instrument, singing, dancing, acting, pantomiming, puppeteering, juggling, engaging in magic, presenting or enacting a play, work of art, physical or mental feat or creating visual art. The terms shall not include the application of substances to other persons, including, but not limited to, paints, dyes and inks, nor shall the terms include the provision of personal services that involve the touching of another, such as nail painting or hair weaving, braiding, cutting, or styling.

(h) **Performer.** A Performer is a person who Performs. Indicia of a Performer are seeking or accepting voluntary contributions through any means, including passing around a hat or leaving open an instrument case or other receptacle, soliciting, or accepting, directly or indirectly, donations after a Performance, attempting to draw attention, convene an audience or engage onlookers as spectators or participants in a Performance. Individuals who dress in a costume, pose for photographs and solicit or accept gratuities will be deemed Performers and are subject to the rules and regulations pertaining to Performers.

(i) **Street End or Street Ends.** Street Ends are the areas or portions of the Boardwalk located at the Boardwalk's intersection with an east-west street, which may be more clearly delineated by the east and west edges of the Boardwalk, and by invisible lines extending across the Boardwalk, as a continuation of the northern and southern edges of the east-west street.

(j) **The Town.** The Mayor and City Council of Ocean City, a municipal corporation.

(k) **Vend or Vending.** To sell, offer for sale, expose or display for sale, solicit offers to purchase, barter or receive compensation for Expressive Materials other than from a traditional brick and mortar establishment or property, even if characterized as a donation.

(l) **Vendor.** A Vendor is a person who Vends, but does not do so from a traditional brick and mortar establishment or property and thus is not a merchant as defined in subsection (f) above. Vendor includes the employers, employees, and agents of a Vendor.

**Sec. 62-2 Findings and Purposes.** The City Council of the Town finds and declares as follows:

- (a) The Boardwalk constitutes a major tourist attraction in the Town, hosting approximately eight million visitors annually. The Boardwalk is a limited space geographically, located in a narrow, linear stretch of land that is bounded by the beach to the East and private property to the West. The Boardwalk is approximately three miles long, and its width ranges from approximately 32 feet to 80 feet at varying locations. The space is further constrained by the fact that the Boardwalk serves as the primary ingress and egress route to the Boardwalk-facing properties and the adjacent beach for the Town's police, fire, beach patrol, ambulance, and other emergency response vehicles, which require such access along the Boardwalk. Although primarily used by pedestrians, the Town also operates a motor vehicle known as the "tram" as a means of public transportation along the Boardwalk. During the peak months for tourists, the Boardwalk becomes highly congested, with pedestrians walking along the Boardwalk visiting the shops, eateries, and attractions the Boardwalk has to offer, which include Performers and Vendors.
- (b) Historically, visitors, including tourists, have been drawn to the Boardwalk for a myriad of reasons, including but not limited to, the fact that the Boardwalk has served as a traditional public forum for Performance and other expressive activity. Performers viewed the large crowds of visitors to the Boardwalk as a pool of potential customers. The number of Performers and persons engaging in expressive activities continues to increase each year and without proper regulation, the Boardwalk has transformed from a vibrant center of art and expression to a commercial "flea market." Additionally, the proliferation of Performers requires regulation due to the congestion and restriction of the free-flow of pedestrian traffic. In an effort to address the issues of public safety, congestion and overcrowding on the Boardwalk, the Town imposed the reasonable time, place, and manner restriction of confining Performers to the Street Ends along the Boardwalk. Notwithstanding this regulation, competing interests for space on the Boardwalk have since intensified, and thus considerable congestion and overcrowding continues to plague the Boardwalk, and altercations over space and citizen complaints have resulted in a significant and increasing need for law enforcement and other Town resources.
- (c) Unregulated Performances and Vending adversely affect the historic character of the Boardwalk, and hamper rather than encourage a wide variety of Performances and other expressive activity, resulting in an economic and cultural loss to the Town. Therefore, the Boardwalk requires additional, reasonable time, place, and manner restrictions to retain its unique historic character as a center of Performance and other expressive activity, preserve its status as a tourist attraction, protect the commercial life of the Boardwalk, and ensure the safety and enjoyment of residents, visitors, Performers, and Vendors alike. Due to its unique historical, geographical, and physical characteristics, the Boardwalk requires its own set of rules and regulations different from other public parks in the Town.
- (d) Unregulated Performing and Vending harms the Boardwalk, and therefore must be regulated because:

- (1) The amount of space on the Boardwalk that is available for Performers and Vendors is limited due to the size of the Boardwalk and the large crowds of visitors that the Boardwalk attracts, particularly with respect to the area of the Boardwalk between South First Street and Ninth Street. Due to the limited amount of space, unregulated Performing and Vending along the Boardwalk has resulted in conflicting claims for the available spaces, significant congestion, and consistent overcrowding.
- (2) The Town has lacked appropriate regulations and a system for allocating available space for Performing and Vending, so that altercations have occurred as Performers and Vendors compete for locations and amounts of space. Many citizens have expressed their concerns regarding the lack of free flow of pedestrian traffic on the Boardwalk during the summer months and the potentially harmful or toxic nature of materials being used by Performers and Vendors (e.g., spray paint canisters and "henna" dye). Also, many express concern about the abandonment of items or packages on the Boardwalk by Performers and Vendors, which typically requires a law enforcement response.
- (3) The lack of sufficient regulation has also resulted in law enforcement dedicating a great deal of time, effort, and resources to determining whether certain activities or materials are, indeed, expressive, detracting them from spending time on more traditional law enforcement matters.
- (4) Regulation is necessary, therefore, to allocate and manage the use of the limited space on the Boardwalk, to provide law enforcement, Town officials, and members of the public with certainty as to what types of activities are permitted, and to address the present issues of overcrowding, disorder, and unnecessary conflict.
- (5) Tables, pushcarts, stands, and certain equipment of Performers and Vendors impede the orderly movement of pedestrian traffic along the narrow Boardwalk, which led to Performers and Vendors being limited to the Street Ends of the Boardwalk. Simply moving all Performers and Vendors to the street ends, however, has not adequately addressed these problems. Certain equipment of Performers and Vendors contributes to visual clutter and blight, especially when it impacts the ability of Boardwalk visitors to see the Atlantic Ocean. Additionally, the Town maintains an interest in attracting tourists and preserving businesses along the Boardwalk. Thus, further regulation, plus limits on of the types, size, use, and displays of equipment by Performers and Vendors is necessary to manage the orderly movement of pedestrian traffic, pedestrian safety, and the public's overall enjoyment of the Boardwalk.
- (6) Members of the Town's law enforcement and emergency response units have expressed the need for swift and efficient access to the beach in response to life-threatening emergencies, such as drownings. On a number of occasions, these units have been forced to delay their response to emergency situations until crowds gathered around Performers and Vendors could move or until Performers and Vendors had dismantled their set-ups. While initially the Town prohibited Performances and Vending on North Division Street in order to facilitate

emergency vehicle access to the beach, members of the Ocean City Police Department and Ocean City Beach Patrol have indicated that they need to be able to access the beach via Dorchester Street in addition to North Division Street. In order to ensure that emergency vehicles are able to access the Beach as quickly and efficiently as possible, therefore, Performers and Vendors are excluded from the street ends of both North Division Street and Dorchester Street;

- (7) Unregulated Performing and Vending creates unnecessary, excessive, and unreasonable congestion and noise on the Boardwalk, is detrimental to the public health, welfare and safety, is contrary to the public interest, harms residents, the commercial life of the Boardwalk and the historic character of the Boardwalk, and diminishes the quality of life for those who visit, live or work on or near the Boardwalk. Regulation, therefore, is necessary to establish restrictions on noise produced by Performers and Vendors on the Boardwalk.

**Sec. 62-3 Boardwalk Performing and Vending Limitations.**

No Person shall engage in Performing or Vending along the Boardwalk, except as specifically allowed in this Chapter.

**Sec. 62-4 Only Expressive Materials may be Vended on the Boardwalk.**

The peddling of non-expressive materials on the Boardwalk is prohibited. Vending as defined above (i.e., vending of all newspapers, periodicals, books, pamphlets or other similar written material; and of cassette tapes, compact discs, digital video disks, paintings on paper or fabric, photographs, sculpture and prints that have been created or composed by a Performer or Vendor) is permitted as described below in this Chapter.

**Sec. 62-5 Only Performers may Perform on the Boardwalk**

The provision of services not constituting a Performance offered in exchange for consideration, including, but not limited to, seeking or accepting voluntary contributions, and soliciting or receiving, either directly or indirectly, donations or gratuities, is prohibited.

Only a Performer as defined above (i.e. a person that engages in the playing of a musical instrument, singing, dancing, acting, pantomiming, puppeteering, juggling, engaging in magic, presenting or enacting a play, work of art, physical or mental feat or creating visual art) is permitted to Perform as described below in this Chapter.

**Sec. 62-6 Prohibition of Performing and Vending on the Street Ends at N. Division Street and Dorchester Street**

No Person shall engage in Performing or Vending on the Street Ends located at N. Division Street and Dorchester Street.

**Sec. 62-7 Performing and Vending in Designated Spaces.**

To address the findings and purposes set forth in this Ordinance and to preserve the Boardwalk's history of fostering Performances and other expressive activity, the Town Director shall establish in the available space on the Boardwalk's most congested areas, that is, between and including South First Street and Ninth Street, but excluding the Street Ends located at N. Division Street and Dorchester Street, Designated Spaces where persons can Perform and Vend. Only Performers and Vendors seeking to utilize those Street Ends located between and including South First Street and Ninth Street will be subject to the allocation and selection system for Designated Spaces described in this Chapter. Persons who are distributing Expressive Materials, but are not Vendors shall not be subject to the requirements of this Section. The allocation and selection for Designated Spaces shall only be in effect from May 1 through September 30 of each year.

**Sec. 62-8 Allocation and Selection of Designated Spaces.**

- (a) The Director shall designate spaces on the Boardwalk between and including South First Street and Ninth Street, referred to as the Designated Spaces. The City Council by Resolution shall approve or disapprove the spaces designated by the Director. The Designated Spaces as so approved by the City Council shall be the Designated Spaces for purposes of this Chapter. The Designated Spaces will be available for use in accordance with a first-come, first-served allocation and selection system for two periods of use; the first period shall be Monday through Thursday and the second period shall be Friday through Sunday. There shall be no more than three Designated Spaces per street end, and the size of each of the Designated Spaces shall not exceed 100 square feet in dimension.
- (b) The Designated Spaces will be available for selection twice a week, on Mondays and Fridays, at the Office of the Town Clerk. All selections must occur on Mondays and Fridays one week in advance of using the desired Designated Space, so Performers and Vendors seeking to use a space on Monday through Thursday must sign up for that space on the Monday of the prior week. Similarly, Performers and Vendors seeking to use a Designated Space on a Friday through Sunday must sign up for that space on the preceding Friday. Persons seeking to obtain a designated space or their agent as defined herein shall arrive at the Office of the Town Clerk no earlier than 9:00 a.m. on Mondays or Fridays, depending on when a space is desired.
- (c) At the time of selection of a Designated Space, Performers and Vendors must affirm that the nature and scope of the activity in which they intend to engage constitutes permissible Performing or Vending as defined above.
- (d) At the time of selection, Performers and Vendors shall describe on the selection form provided by the Office of the Town Clerk the nature and scope of the activity in which they intend to engage. To the extent the description fails to conform to the definitions of permissible Performing or Vending as provided above, the Clerk

who is responsible for receiving the application shall refuse to permit a person to select a space.

**Sec. 62-9 Performing and Vending in Other Areas of the Boardwalk.**

At Street Ends between and including Tenth Street and 27<sup>th</sup> Street, Performers and Vendors may engage in expressive activities on a first come, first served basis. Performers and Vendors seeking to utilize the Street Ends between and including Tenth Street and 27<sup>th</sup> Street will not be required to engage in the allocation and selection process for Designated Spaces. Persons engaging in Performing and Vending at the Street Ends located between and including Tenth Street and 27<sup>th</sup> Street shall nonetheless be subject to the rules and regulations governing Performers and Vendors in § 62-10(d), (e), (j), (k), (l), (n), (o) (p), (q), (r), and (s), and other provisions not specifically related to the use of Designated Spaces.

**Sec. 62-10 Rules and Regulations Governing Performers and Vendors.**

All persons seeking to Perform or Vend at any one of the Designated Spaces between and including South First Street and Ninth Street or at any one of the Street Ends between and including Tenth Street and 27<sup>th</sup> Street are subject to, and shall comply with, the following restrictions:

- (a) No Performer or Vendor may select a Designated Space on the same Street End for consecutive selection periods during the same week. For example, a Performer or Vendor may not select a Designated Space for Monday through Thursday of a particular week, and then select a Designated Space on the same Street End for Friday through Sunday of the same week.
- (b) No Performer or Vendor shall allow anything in his/her Designated Space to extend beyond the boundaries of the Designated Space or place anything adjacent to his/her Designated Space or obstruct or impede the access areas between the Designated Spaces.
- (c) A Performer or Vendor may mark the boundary of a space with a rope laid on the surface of the Boardwalk.
- (d) No Performer or Vendor shall place or allow any item exceeding five feet above ground, or allow any Street End or Designated Space to be enclosed, or affix props or equipment to the Boardwalk surface.
- (e) No Performer or Vendor occupying a location at a Street End or Designated Space shall leave items unattended at that Street End or the Designated Space for a period longer than 15 consecutive minutes.
- (f) No Performer or Vendor shall occupy more than one Designated Space at any given time or solicit another person to obtain or occupy an additional Designated Space on his or her behalf.

- (g) No Performer or Vendor shall purchase, sell, barter or exchange any Designated Space with any other person.
- (h) No Performer or Vendor shall attempt to reserve a Designated Space in any fashion other than the selection system described in this Chapter and shall not interfere with another's use of a Designated Space.
- (i) A Performer or Vendor having selected a Designated Space will have exclusive use of that area between the hours of 10:00 a.m. and 1:00 a.m. each day.
- (j) Performers and Vendors shall be permitted to use Street Ends between and including Tenth Street and 27th Street between the hours of 10:00 a.m. and 1:00 a.m. each day.
- (k) Performers and Vendors shall not engage in any Performances or Vending on the Boardwalk between the hours of 1:00 a.m. to 10:00 a.m. each day.
- (l) At all times, all persons on the Boardwalk, including Performers and Vendors, must comply with Subsection 30-271 of this Code (i.e. the "Noise Ordinance").
- (m) All Performers or Vendors must keep clean and free of litter and debris the area in which they perform. No permanent markings shall be made in any Designated Space by a Performer or Vendor.
- (n) A Performer or Vendor shall be permitted to use Generators in any place on the Boardwalk where Performing or Vending is authorized, but they shall not be permitted to fuel or refuel Generators on the Boardwalk or store, or otherwise possess, fuel on the Boardwalk not contained in the generator.
- (o) No Performer or Vendor shall advertise, or employ an individual to advertise, his or her Performance or Vending outside of the Designated Space or Street End area which the Performer or Vendor occupies.
- (p) No Performer or Vendor shall connect to any municipal electric outlet for use in any display or Performance.
- (q) No Performer or Vendor shall use nudity, pornographic materials, or obscenity in any display or Performance.
- (r) No Performer or Vendor shall use animals while Performing or Vending on the Boardwalk, other than for legitimate purposes pursuant to the Americans with Disabilities Act.
- (s) No Performer or Vendor shall use fire or similarly hazardous materials while Performing or Vending on the Boardwalk. Similarly hazardous materials shall include, but are not limited to, knives, swords, or other sharply bladed instruments.

**Sec. 62-11 Use of Town Property for Performing or Vending Prohibited.**

No Performer or Vendor shall use or obstruct access to any Town-owned or maintained property, equipment, or utilities including, but not limited to, street furniture, benches, planters, trash receptacles, or other structures or equipment installed on public property for purposes of Performing or Vending or for displaying anything whatsoever.

**Sec. 62-12 Violations.**

Any person found to be in violation of a provision of this Ordinance may be subject to the following:

An infraction punishable by a fine of no less than \$100.00 and no more than \$1,000.00.

Nothing in this Section shall be construed as prohibiting the Town from enforcing any and all other provisions of this Code or other applicable laws.

**Sec. 62-13 Posted Notice.**

The Town shall post signs providing notice of the existence of rules for the allocation and use of the Designated Spaces and Street Ends. A complete copy of this Chapter shall be available for inspection and copying at the Office of the Town Clerk.

**Sec 62-14 Severability.**

If any portion, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each portion or subsection, sentence, clause and phrase herein, irrespective of the fact that any one or more portions, subsections, sentences, clauses or phrases be declared invalid.

Be it further enacted that the effective date of this Ordinance shall be July 27, 2015.

ATTEST:



DIANA CHAVIS, Clerk



RICHARD W. MEEHAN, Mayor

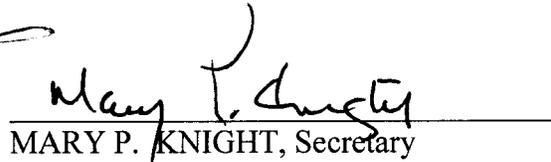
Approved as to Form:



LLOYD MARTIN, President



GUY R. AYRES III, Solicitor



MARY P. KNIGHT, Secretary