

**REPORT OF THE
TOWN OF OCEAN CITY, MARYLAND
TASK FORCE ON BOARDWALK REGULATION**

April 13, 2015

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I. INTRODUCTION

A. The Issues That The Task Force Is Required To Study

The Task Force on Boardwalk Regulation (the “Task Force”) was created on January 20, 2015 by unanimous vote of the City Council of Ocean City which adopted Resolution 2015-1 directing that a task force be established and that it be composed of no fewer than five members, including at least one street performer, each to be appointed by the Mayor and approved by the City Council. The Resolution directed the Task Force to hold public hearings, study and make recommendations in connection with:

- (1) the impact of recent court rulings addressing regulation of the Boardwalk;
- (2) steps that the Town of Ocean City has taken to satisfy those court rulings;
- (3) issues that have arisen as a result of the Town’s implementation of those court rulings;
- (4) the current state of applicable law;
- (5) any revisions to the Town Code needed to address issues relating to the regulation of the Boardwalk.

The Resolution directed the Task Force to promptly report its findings and recommendations to the Mayor and City Council.

B. The Composition Of The Task Force

The Mayor appointed the following persons as members of the Task Force:

- (1) Greg Shockley, Chairman of the Task Force, owner of Shenanigan’s Restaurant and Chair of the Maryland Tourism Committee;
- (2) Mark Chase, Artist and Street Performer;
- (3) Lee Gerachis, Owner of Malibu’s Surf Shop;

- (4) Frank Knight, Board Member of the Ocean City Development Corporation;
- (5) Bob Rothermel, Member of the Ocean City Downtown Association.

The City Council approved these appointments, and the Town government provided staff for the Task Force.

II. THE TASK FORCE’S MEETINGS AND INVESTIGATIONS

The following is a description of the meetings held by the Task Force and the scope of its investigation. This description has been taken largely from the transcripts of the Task Force meetings which are attached as Exhibit 1.

A. Session 1: Thursday, February 5, 2015 1:00 PM

The Task Force members were introduced. The Chairman made some introductory remarks regarding the recent history of Boardwalk regulation. He recounted that in 2011 the City Council adopted an ordinance that (1) required all street vendors and performers to confine their activities to the street ends, (2) required all street performers to obtain a license from the Town, and (3) banned all sales by street performers and vendors. That ordinance was challenged in federal district court. The lead plaintiff in that case was Mark Chase, a Task Force member. The district court found that some provisions of the ordinance were necessary to protect public health and safety, while other provisions unnecessarily and impermissibly curtailed First Amendment rights to free expression.

The district court issued an order enjoining enforcement of some portions of the ordinance. (Included as Exhibit 2 is a copy of the district court Order issued, labeled “Preliminary Injunction,” another document labeled “Consent Decree,” and a copy of the

ordinance itself, which is codified in Section 62 of the Code of the Town of Ocean City. Exhibit 3 is a copy of the district court memorandum opinion explaining its reasoning.)

In essence, the district court upheld that portion of the ordinance that restricted street performers and street vendors to certain parts of the Boardwalk (the street ends, with the exception of the end of N. Division Street, from which vendors and performers were excluded completely). The district court, however, struck down the license requirement and ruled that the Town could not prohibit the sale of “expressive materials” by street vendors and performers.

Task Force members initially discussed issues created by the Town’s attempt to enforce the ordinance as modified by the district court’s ruling. For example, police officers charged with enforcing the law often had to decide (and sometimes had difficulty deciding) whether any given item sold on the Boardwalk was protected “expressive material” or if a person was engaged in permitted expressive activity.

At the conclusion of this discussion, the Task Force identified the following issues it would consider:

1. The effects of street performers and vendors on traffic circulation and the use, safety and enjoyment of the Boardwalk.
2. The need for additional regulation of activities on the Boardwalk to address health and safety, noise, and emergency access issues and the nature and scope of such regulation.

The Task Force then identified the following witnesses from whom it would request testimony:

1. Lt. Mark Pacini, Ocean City Police Department;
2. Shannon Tippett, Owner, Mug & Mallet Restaurant;

3. Bill Gibbs, Owner, Dough Rollers Restaurant and Breakers Hotel;
4. Vicki Barrett, Owner, An Inn on the Ocean;
5. Jackie Ball, Owner, Park Place Hotel and Conner's Beach Café;
6. Don Timmons, Dumser's Ice Cream;
7. Yadigar Karsli, Owner, Love's Lemonade;
8. Glenn Irwin, Director, Ocean City Development Corp.;
9. Hale Harrison, Harrison Group Resort Hotels and Restaurants;
10. Joseph L. Kroart, III, Ocean Gallery;
11. Todd Ferrante, Owner, Park Place Jewelers;
12. Bruce Krasner, Owner, T-Shirt Factory Stores;
13. Lt. Ward Kovacs, Ocean City Police Department;
14. Carrie Lynch, Eastern Regional Director, ASSE International Inc./Aspire Worldwide.

In addition, the Task Force Chairman ruled that the Task Force would hear testimony from any interested person and that written testimony could be submitted for the Task Force's consideration.

B. Session 2: Monday, February 9, 2015 6:00 pm

The Task Force heard testimony from 17 witnesses, who identified diverse issues and proposed solutions. The testimony for each witness is summarized below.

(1) Lt. Mark Pacini

Lt. Pacini has worked in the Ocean City Police Department on various patrols for approximately 25 years. (February 9, 2015 Hearing Tr. at 7.) Since 1990, he has been assigned as the Watch Commander responsible for Ocean City's largest patrol shift

during the summer season (*Id.*) Lt. Pacini expressed his desire to make the Boardwalk a safer place, while remaining cognizant of the Town's public reputation given the 24/7 social media and trending news cycles. (*Id.* at 7-8.) Lt. Pacini brought a PowerPoint presentation with him to aid in his testimony, and submitted it as an accompanying memorandum for the Task Force. (A copy of these materials is attached as Exhibit 4.)

Lt. Pacini identified a number of issues that the Ocean City Police Department currently faces. First, he noted that the current system does not allow police to gauge or control the number of performers or crowd sizes on the Boardwalk. (*Id.* at 11.) Second, Lt. Pacini and his officers have had a difficult time implementing the district court's opinion from *Chase v. Town of Ocean City, Maryland*, 825 F. Supp. 2d 599 (D. Md. 2011), in that on many occasions they have had difficulty determining what items being sold and activities conducted on the Boardwalk are constitutionally protected. (*Id.* at 12-13.) Lt. Pacini described the system in place to address these concerns post-*Chase*, and it consisted of frequent communication between Lt. Pacini and City Solicitor Guy Ayres as issues arose. Mr. Ayres would conduct research and make a "ruling" on whether the activities by Boardwalk vendors and performers were allowed. (*Id.* at 14-15.) Lt. Pacini also created an educational flier that listed certain protected and unprotected items, and he handed out this flier to new and old performers alike in an attempt to streamline the process. (*Id.* at 15.)

Despite these efforts, Lt. Pacini routinely encountered items or materials which fell into what he termed a "gray area" with respect to their constitutional protection. (*Id.* at 16.) Lt. Pacini remarked that he would receive emails or other communication on a daily basis about what is protected and what is not. (*Id.*) Lt. Pacini acknowledged that he spends quite a bit of time and effort on these issues by himself. (*Id.* at 19.) The reason he handles this process by himself is so that other officers are able to conduct their

regular duties. Overall, Lt. Pacini recognized that post-*Chase*, the Boardwalk ordinances leave far too much gray area for viable and effective enforcement of the current laws. (*Id.* at 31-32.) As such, he brought to light a number of additional issues to be addressed, which are discussed below.

First, Lt. Pacini expressly requested that the Task Force consider a thorough and clear definition of what is a “performer,” what constitutes a “performance,” and what “expressive material” is permitted on the Boardwalk. (*Id.* at 28, 32.)

Lt. Pacini explained that he and his department discovered last year that the current state of the Boardwalk has led to merchants violating Town ordinances and conducting “street performing businesses” on their own. (*Id.* at 19-20.) One example of such an activity is merchants hiring international students to work as henna tattoo artists on the Boardwalk, in apparent violation of the students’ J-1 visa restrictions. (*Id.* at 19, 25-26, 34.) In response to this situation, Lt. Pacini has attempted to cite the businesses, or even go after their business licenses, but the cumbersome administrative process has kept him from effectively pursuing this option. (*Id.* at 35-36.)

The reason some merchants are inclined to take such measures to conduct these “street performing businesses,” stems from the tension between business owners and street performers and sellers of expressive material. Lt. Pacini described these tensions and shared the story of the performer who set up his henna tattoo stand directly across from a Boardwalk store that sold henna tattoos inside. (*Id.* at 36.) The performer’s actions resulted in an altercation between performer and merchant where the business owner threatened to kill the performer if he would not move. (*Id.*)

Lt. Pacini requested the Task Force to investigate and address whether the following conduct can be constitutionally regulated or banned: (1) activity that requires

the touching of others, such as face painting, henna tattooing, hair feathering, or hair braiding, (2) performers' use of gas generators, spray painting materials, LED lights, and benches and walls along the Boardwalk, and (3) the noise levels of performers and their amplifiers. (*Id.* at 22, 24-25, 27-28.) Furthermore, Lt. Pacini expressed his concerns about performers erecting stages/platforms or roping off areas for their performances, performers/street merchants leaving unattended materials and possessions for extended periods of time on the Boardwalk, and of the Town not knowing the identity of the costume wearing street performers whose faces are hidden from the public. (*Id.* at 21, 25, 26.) A final concern of Lt. Pacini was whether the Town needs to regulate the age of the performers by requiring underage performers to obtain parental consent and/or supervision prior to performing. Similarly, he observed that some performers invited children to participate in their acts with them and wondered whether the Town should prevent performers from interacting with minors, without first getting consent from the minors' parents. (*Id.* at 22, 26.)

(2) Lt. Ward Kovacs

Lt. Kovacs is a member of the Ocean City Beach Patrol who has worked in Ocean City for 33 years. (*Id.* at 38.) The majority of his testimony focused on the issues he has experienced with respect to Dorchester Street. (*Id.* at 39.) Since 1992, Dorchester Street has been the primary access point for the emergency response units to the beach. (*Id.*) Lt. Kovacs informed the Task Force that the Beach Patrol is located by Dorchester Street and the Boardwalk, and on average, they conduct anywhere from twenty to forty Boardwalk crossings per day at Dorchester Street. (*Id.* at 39-40.) This equates to roughly three thousand crossings at that location each season. (*Id.*) These crossings are made by the department's ATVs, SUVs, and pickup trucks. (*Id.* at 39.) During these crossings, Lt. Kovacs stated that the officers encountered performers roughly one-third of the time.

(*Id.* at 41.) While the performers blocking the pathway for the crossings is generally a mild inconvenience to the officers bringing materials to the beach, there have been times when an officer's response to a life-threatening situation has been delayed. (*Id.*)

In particular, Lt. Kovacs described occasions when emergency vehicles were delayed in responding to potential drownings. (*Id.* at 43-44.) On one occasion, a Sergeant observed a swimmer face down in the water and initiated a response. (*Id.* at 43.) When Lt. Kovacs attempted to respond with an emergency vehicle crossing Dorchester Street, a large crowd by a performer delayed Lt. Kovacs in his attempt to cross the Boardwalk. (*Id.* at 43-44.) As a result, a Sergeant was left by himself in the heavy surf attempting to aid the unconscious drowning victim. (*Id.* at 44.) A similar situation arose later, but then it was Lt. Kovacs who was left alone attempting to save a swimmer as the Sergeant was delayed in attempting to cross Dorchester Street to aid him. (*Id.*)

Given these events and the life-threatening risks created by congestion at Dorchester Street, Lt. Kovacs requested the Task Force to consider prohibiting performances on the street end of Dorchester Street. (*Id.* at 44-45.) Prohibiting performances at this street end would afford emergency response vehicles the safest and quickest access to the beach without unnecessarily delaying their responses. (*Id.* at 46.) To support his position, Lt. Kovacs also provided photographs of the type of congestion that Town officers and police are encountering in attempting to cross the Boardwalk. (These photographs are attached collectively as Exhibit 5.)

Lt. Kovacs explained that, while he understood the need for and value of street performers, in the interest of safety, Dorchester Street may not be an appropriate place for such activity. (*Id.* at 47.) Lt. Kovacs has witnessed times where street performers have

made eye contact with department officials attempting to cross Dorchester Street and refused to move while claiming that they had a right to be there. (*Id.* at 42.) Lt. Kovacs stated that street performers sometimes impede emergency vehicles even when they do not have a large crowd. (*Id.* at 51.) Many times, performers set up a booth or stand, or have speakers with chords that require time to pack up and move before the response unit can cross the street. (*Id.*) With that in mind, Lt. Kovacs requested that the Task Force consider a proscription of all street performances on Dorchester Street.

(3) Glenn Irwin

Mr. Irwin is the Executive Director of the Ocean City Development Corporation. (*Id.* at 55.) Last year, Mr. Irwin saw more street performers in Ocean City than he had ever seen in his 15 years in the Town. (*Id.* at 56.) He believed that the large number of performers has caused the Boardwalk to reach its saturation point. (*Id.*) He has also witnessed performers setting up in the early morning hours to lay claim to their spots or roping off certain areas. (*Id.* at 58.) These performers have become territorial and increasingly focused on capturing and retaining what they perceive to be the prime locations on the Boardwalk. (*Id.* at 58-59.) At the same time, he has received complaints from merchants who are selling the same goods as some of the performers, but have the added expenses of rent and other licensing requirements. (*Id.* at 57.)

To solve a number of these problems, Mr. Irwin proposed a rotation of the performers through a lottery system. (*Id.* at 59.) The lottery system would randomly and fairly spread out the performers and alleviate the repetitive nature of some of the performances. (*Id.*) The spaces designated using this lottery system would also be drawn in such a way as to prevent the blockage of emergency access points to the beach and other entrance ramps to the Boardwalk. (*Id.*)

(4) Joseph Kroart, III

Mr. Kroart works at the “Ocean Gallery” art studio that is owned by his father. (*Id.* at 62.) Mr. Kroart’s main desires are to ensure (1) the health of the tourism economy in Ocean City, and (2) that the visitors are safe. (*Id.* at 64-65.) Mr. Kroart recognized the value of street performers to the experience of Ocean City tourists, but cautioned the Task Force that visitors routinely think of the Boardwalk as a single representative entity of the Town, meaning that they believe all businesses and performers alike are employees of the Town. (*Id.* at 66-67.) To that end, Mr. Kroart wanted the liability of the performers versus the Town to be addressed. (*Id.* at 67.)

Mr. Kroart declared that the Town has a compelling interest in protecting its tax base by ensuring that the merchants who pay for prime real estate on the Boardwalk are viable. (*Id.* at 71.) This economic interest, in Mr. Kroart’s opinion, bolsters any argument for regulation of the street performers. (*Id.*)

In terms of regulation, Mr. Kroart believed that there should be an identification requirement for the costumed characters. (*Id.* at 68.) Mr. Kroart was also in favor of regulating body paint applied to the skin. (*Id.*) Finally, he suggested that performers be required to carry insurance in order to mitigate any potential harm. (*Id.* at 70.)

(5) Vicki Barrett

Ms. Barrett is the owner of “An Inn on the Ocean,” and also works with the Ocean City Development Corporation. (*Id.* at 73.) Ms. Barrett acknowledged the importance and value of street performers, but also understood that merchants are losing money due to the current system in place. (*Id.* at 74-75.) One merchant informed Ms. Barrett that he lost up to \$30,000 last summer alone. (*Id.* at 75.) She stated that a lot of the angst from merchants results from the fact that they are required to pay rent, licensing fees, display

fees, taxes, and adhere to a number of regulations to which street performers do not. (*Id.* at 75-76.) Ms. Barrett also identified safety issues as a concern of hers by virtue of not knowing the identities of the costumed characters whose faces are covered. (*Id.* at 76.)

Ms. Barrett proposed a system to rotate the performers so as to prevent the same acts from performing in front of the same stores each day. (*Id.* at 77-78.) Ms. Barrett expressed that some of her customers have complained about this very fact. (*Id.*) Additionally, in the interest of public safety, Ms. Barrett recommended a registration system so that the identities of all performers are known. (*Id.* at 78.)

(6) Kitty Wyatt

Ms. Wyatt owns “Sassy Beachwear,” located on the corner of Dorchester Street and the Boardwalk. (*Id.* at 82.) Ms. Wyatt has had both positive and negative experiences with performers on the Boardwalk. While some performers have been respectful of her requests to move to keep them from blocking the entrance to her doors, others have refused to give up spaces because they claim that have a right to be there. (*Id.* at 82-83.) This results in business being taken away from her store. (*Id.* at 83.) Her business is affected because the performer’s crowds block the entrance to her store, and she has received complaints from customers that they were unable to find her store because of these crowds. (*Id.* at 86-87.) Ms. Wyatt has also witnessed the same thing happen in front of the Candy Kitchen. (*Id.* at 87.)

Ms. Wyatt has also witnessed a performer refuse to move when a lifeguard vehicle tried to return from the beach. (*Id.*) Ms. Wyatt has also witnessed performers get into arguments with one another, directly across the Boardwalk in front of her store. (*Id.* at 83-84.)

(7) Yesim Karaman

Ms. Karaman is a Town employee whose family owns the “Golden Plate” restaurant at First Street on the Boardwalk. (*Id.* at 89.) Ms. Karaman recognized that many merchants are upset about paying rent and taxes while the performers do not have to do so, but she also understood that protecting First Amendment free expression is important. (*Id.* at 89-90.) The goal of Ms. Karaman’s family is to make money to pay rent, take care of the family, and help to maintain the family-friendly environment of Ocean City. (*Id.* at 90.)

Ms. Karaman, however, has experienced and witnessed a number of problems due to the street performers, which she shared with the Task Force. Specifically, performers have cursed at Ms. Karaman after she asked them to turn their music down. (*Id.* at 91.) Ms. Karaman, her mother, and her sister have suffered headaches from the spray paint fumes from the Boardwalk, and her mother also suffers from asthma, which is exacerbated due to the fumes. (*Id.*) Additionally, she has witnessed store fronts being blocked continuously due to the large crowds, and she vividly recalled a situation where paramedics could not respond to an emergency call on the beach because of the setup of the street performer on the Boardwalk. (*Id.* at 92-93.)

In response to these issues, Ms. Karaman proposed a rotation of the street performers that also limited their performance areas to certain designated spaces on the Boardwalk. (*Id.* at 90, 93.)

(8) Christine Lieb

Ms. Lieb is an Ocean City resident and a “Boardwalker,” who walks the boards approximately 280 to 300 days a year. (*Id.* at 94.) She wanted to give the Task Force her perspective as a citizen, as opposed to a performer or merchant. (*Id.*) In her opinion,

restaurants and stores are losing business due to the fact that certain performers are working in front of their locations. (*Id.*) Ms. Lieb also spoke of the overcrowding that has prevented her and her husband from walking the Boardwalk as they have in the past, forcing them to inch their way through the crowds. (*Id.* at 95.) Additionally, Ms. Lieb and her husband have also been antagonized by performers when they have to walk through their circle shows.

Ms. Lieb also reported witnessing performers getting into public arguments with one another. (*Id.* at 94-95.) On one occasion, a young banjoist and a young guitarist had a heated confrontation with a lesser talented violinist who was verbally abusive to the two younger musicians until they eventually left. (*Id.*)

(9) Arlo Hemphill

Mr. Hemphill is a resident of Ocean City whose family owns a number of stores on the Boardwalk. (*Id.* at 96.) Mr. Hemphill spoke in favor of rotating performers, and perhaps even having spaces highlighting the most talented performers that draw the largest crowd. (*Id.* at 97.) Mr. Hemphill also suggested developing the area around Sunset Park so that it may be seen as a desired venue for performers, similar to Mallory Square in Key West, Florida. (*Id.* at 98.)

(10) Brian McCarthy

Mr. McCarthy is a resident of Ocean City, who wanted to let the Task Force know that due to the large crowds gathered around the performers last year, he and his wife experienced the most difficult times walking the Boardwalk since they have been in Ocean City. (*Id.* at 98-99.) To address this, Mr. McCarthy proposed rotating the performers, which would provide a variety of shows along the Boardwalk while freeing up space for Boardwalk pedestrians. (*Id.* at 99.)

(11) Michael Cantine

Mr. Cantine is the owner of “Fat Cats Airbrush,” a store on the Boardwalk where customers can purchase airbrushed paintings on articles of clothing like t-shirts and hats. (*Id.* at 100.) Mr. Cantine’s main frustration with the current state of street performers is that he, as a commercial store owner, is required to pay taxes, insurance, rent, and employee salaries, but the street performers are not. (*Id.* at 101.) Simply put, he did not believe the current state of the Boardwalk to be fair. (*Id.* at 105.) He has lost employees due to the ability of street performers to have a presence on the Boardwalk doing the same things that his store does, but without the same expenses. (*Id.*) In his estimation, there is too much gray area about what is considered “art”, and what is protected as “free speech,” and he would like a clear definition of what is protected and what is not. (*Id.* at 102-103.)

(12) Earl Cantine

Mr. Cantine is the owner of “Big Island Airbrush,” a store on the Boardwalk that offers the same goods and services as “Fat Cats Airbrush.” (*Id.* at 106.) Mr. Cantine discussed the health hazards of the henna products being used on the Boardwalk, and how they differ from true henna paint. (*Id.* at 107.) Mr. Cantine also recognized that changes needed to be made due to the public safety hazards created by the blockage of emergency access roads. (*Id.*)

To address these concerns, Mr. Cantine proposed a lottery system with rotation of performers that promotes fairness while also relieving congestion on the Boardwalk. (*Id.* at 106.) Further, Mr. Cantine advocated for a permit process and/or a registration system that allowed the Town to know the identities of all performers. (*Id.*) Mr. Cantine also requested that the Task Force provide a clear definition of what constitutes a “performance,” and how that is different from what is considered “retail.” (*Id.* at 107.)

Lastly, Mr. Cantine urged the Task Force to consider the Town's liability via the street performers and act appropriately to ensure the Town is covered on that front. (*Id.* at 106-107.)

(13) Anne Marie Constable

Ms. Constable is the Director of the J-1 Exchange Program in Ocean City. Ms. Constable expressed that the program is focused on the safety of the students and their ability to have a positive cultural experience in the United States. Nonetheless, Ms. Constable expressed her fear of the exploitation of these students at the hands of merchants on the Boardwalk. (*Id.* at 111.)

Ms. Constable advised that Boardwalk merchants have hired visiting students to be costumed characters and paid them under the table in cash. (*Id.* at 109-110.) Ms. Constable recognized that this type of activity is in violation of the students' J-1 visa restrictions. (*Id.*) Ms. Constable testified that on more than one occasion she has had to venture to the Boardwalk and physically remove students who are working on the Boardwalk in varying capacities. (*Id.* at 110-111.) She expressed a desire to prevent this from happening, and made herself available to the Task Force to help in any way that she can in order to ensure the safety of these students and keep them free of exploitation. (*Id.* at 111-112.)

(14) Randy Grimm

Mr. Grimm is a musician and performer who has spent many years visiting Ocean City with his family. (*Id.* at 117-118.) Mr. Grimm did not propose any specific solutions, but shared his stories highlighting the value of street performers, and what they contribute to the family-friendly atmosphere and environment of Ocean City. (*Id.* 118-120.)

In particular, Mr. Grimm shared the story of a child named Kevin, who suffers from Down syndrome. (*Id.* at 119.) On one day while Mr. Grimm was performing, Kevin stood and watched the performance quietly from nearby. (*Id.*) A short while later Kevin's grandfather indicated that Kevin wanted to sing as Mr. Grimm continued to play music. (*Id.*) Mr. Grimm invited Kevin to stand next to him and do so, which Kevin did. (*Id.*) Kevin then sang boldly and proudly in a foreign language that Kevin's own family was not familiar with, yet he drew the biggest crowd Mr. Grimm had received all season long. (*Id.*) At the end of the performance the crowd gave Kevin quite a few dollars in tips, which Kevin happily put in Mr. Grimm's tip bucket. (*Id.*) Prior to leaving, Kevin's family informed Mr. Grimm that watching Kevin sing with Mr. Grimm was the highlight of their vacation that year. (*Id.*) For Mr. Grimm, the point in sharing such a story is that street performers have a value to visitors of Ocean City, and while he understood that there are safety issues and problems arising due to street performers, he wanted to remind the Task Force that these performers are a valuable part of the Ocean City experience as well. (*Id.* at 120.)

(15) Dan Troiano

Mr. Troiano is the owner of "Dimensions," a clothing, tattoo and piercing shop on the Boardwalk. (*Id.* at 120.) Mr. Troiano identified the obstruction of the free flow of pedestrian traffic and overcrowding as the main issues caused by the current state of street performers on the Boardwalk. (*Id.* at 121.) He has received complaints that visitors are unable to find his store due to the high volume of people on the Boardwalk in front of his store that block his entranceway while they watch the street performers. (*Id.* at 123.) Mr. Troiano also complained that the second floor of his store smells like spray paint, which affects his customers as they wait to receive tattoos or piercings. (*Id.* at 122.) While he did not expressly propose any solutions, Mr. Troiano appeared to agree

with Member Chase's suggestion to move all performers to the east side of the Boardwalk to prevent the above-described situations from happening. (*Id.* at 124-125.)

(16) Bruce Leiner

Mr. Leiner is the owner of the "Candy Kitchen" stores in Ocean City. (*Id.* at 126.) Mr. Leiner has lived in Ocean City for 45 years, and he recognized that Ocean City is a family town, and as such, safety and keeping the family-friendly environment should be the primary concerns for the Town officials. (*Id.*) With that in mind, Mr. Leiner proposed that performers be prohibited from roping off areas and blocking entrances or ramps to buildings and stores. (*Id.*)

To best achieve these goals, Mr. Leiner proposed having performers set up and perform exclusively in designated spaces on the east side of the Boardwalk. (*Id.* at 127.) These spaces would be made in consideration of a minimum distance from the fire hydrants already on the Boardwalk. (*Id.* at 127.) Mr. Leiner also advocated for a lottery and rotation system with regards to performers and these spaces. (*Id.* at 128.) In Mr. Leiner's view, a rotation of the performers and lottery is a fair and necessary way to protect an individual's right to freedom of speech, while also solving the problems that currently affect the Boardwalk. (*Id.*)

(17) Bill Champion

Mr. Champion has been a performer on the Boardwalk for decades. (*Id.* at 130.) Today, he specializes in making balloon animals, although over the years he has also performed as a clown, ventriloquist and magician. (*Id.*) Mr. Champion believed the most glaring issues on the Boardwalk to be the overcrowding of performers and the fact that costumed characters are able to mask their identities. (*Id.* at 130, 132.) In response to these problems, he suggested that (1) performers not be allowed to cover their faces,

(2) performers be required to perform in designated areas on the Boardwalk, and (3) these designated areas should include locations that are currently being underutilized, such as the area by the arcades. (*Id.* at 130, 132, 135-136.)

C. Session 3: Wednesday, February 18, 2015 1:00 PM

The Task Force heard testimony from 13 witnesses, who continued to identify issues and proposed solutions. The testimony for each witness is summarized below.

(1) David Hartley

Mr. Hartley is the Fire Marshal for the Town of Ocean City. (February 18, 2015 Hearing Tr. at 4.) Mr. Hartley's testimony centered on the use of gasoline powered generators and the ability of the fire department to access fire hydrants on the Boardwalk. (*Id.* at 5-7.) Mr. Hartley also provided the Task Force a memorandum of Fire Marshal Recommendations that discusses the topics on which he testified, which are summarized below. (A copy of this memorandum is attached as Exhibit 6.)

In years past, the Fire Department has run into issues where it has observed potential fire hazards, and all individuals spoken to were cooperative with any department intervention. (*Id.* at 4.) Nevertheless, Mr. Hartley expressed a desire to ideally get to a point with a clearly written code that provides for enforcement on the part of the Fire Department or Police Department in the event that individuals are not so cooperative. (*Id.* at 5.)

Mr. Hartley stated that, while generators may be used safely in accordance with a manufacturer's recommendations, he has concerns regarding their fueling and refueling on such a densely populated area like the Boardwalk. (*Id.* at 5.) Mr. Hartley left it up to the Task Force to consider prohibiting the use of generators. (*Id.* at 6.) He recommended

that if generators were to be permitted on the Boardwalk, that combustible or flammable liquids be kept approximately five feet away from them. (*Id.* at 6-7.) Mr. Hartley also expressed concern about generators with respect to their exhaust and hot manifolds, which members of the public might encounter and burn themselves on. (*Id.* at 7.)

Member Chase suggested that street performers using generators could be required to use a service log to assist the Fire Department in ensuring the generators are up to code. (*Id.* at 8.) Mr. Hartley confirmed this would assist the Fire Department.

If generators are to be permitted, Mr. Hartley made it clear that any fueling and refueling of generators would have to be done off of the Boardwalk, in an area that isn't heavily traveled by pedestrians. (*Id.* 8-9.) Additionally, Mr. Hartley noted that sizes of generators may vary, and as they get larger in size they are noisier. (*Id.* at 10.)

With respect to fire hydrants, Mr. Hartley recommended that in addition to keeping performers minimum distances away from fire hydrants, he would like a clear path to be available to members of the department at all times. (*Id.* at 12.) Mr. Hartley also suggested that performers should not be permitted to obstruct access to fire hydrants. (*Id.*)

(2) Blaine Smith

Mr. Smith is the Assistant Planning Director for Ocean City, and he has been Ocean City's Zoning Administrator since 1985. (*Id.* at 13.) Mr. Smith provided a history of zoning restrictions for the various districts in Ocean City, including the commercial zones along the Boardwalk. (*Id.* at 14-16.) Specifically, Mr. Smith described the outdoor display restrictions on commercial businesses on the Boardwalk, and stated that the restrictions promoted public health, safety, and welfare, and served a legitimate public purpose of safeguarding tourists and families that visit. (*Id.* at 17, 24.)

Mr. Smith recognized that each year the crowd congestion increases with the number of performers on the Boardwalk, and this congestion has created issues for the businesses adjacent to the Boardwalk. (*Id.* at 19.) Mr. Smith did not specifically offer any solutions or speak to the constitutionality of performer vending of expressive material. (*Id.* at 20.)

(3) Todd Ferrante

Mr. Ferrante is the owner of “Park Place Jewelers” on the Boardwalk between 2nd and 3rd Streets. (*Id.* at 25.) Mr. Ferrante has seen in recent years an influx of buskers in Ocean City and identified congestion as the glaring issue affecting the Boardwalk. (*Id.* at 26.)

Mr. Ferrante proposed the implementation of a lottery system that rotated performers, which would give all performers equal opportunity to be in all available locations. (*Id.* at 27.) Mr. Ferrante suggested that these specific locations be limited to certain dimensions as well. (*Id.*) This system would allow performers to have their own space and ability to perform while not taking up so much space that the Boardwalk becomes impassable. (*Id.* at 27-28.)

(4) Jackie Ball

Ms. Ball is the owner of “Park Place Hotel” and “Conner’s Beach Café” between 2nd and 3rd Street on the Boardwalk. (*Id.* at 28.) Ms. Ball’s main focus is the safety of visitors to the Boardwalk. (*Id.*) Ms. Ball has received numerous complaints from hotel guests calling the front desk because they could not sit on their balcony and enjoy their stay due to the music coming from the Boardwalk. (*Id.* at 31.) Ms. Ball has also witnessed costumed characters aggressively pursuing tips and yelling at parents when not tipped sufficiently. Ms. Ball further proclaimed that the pole dancing is unacceptable,

and should not be allowed on the Boardwalk. (*Id.* at 32.) She does not feel it is appropriate for all ages and walks of life experiencing the Boardwalk.

To solve the problems that she had identified, Ms. Ball provided a list of recommendations as follows: All performers should be subjected to a permit/license requirement so that the Town is aware of their identities. (*Id.* at 29.) Moreover, performers should not be permitted to block or obstruct the movement of pedestrians. (*Id.*) Ms. Ball recommended that, if too many individuals gather for a performance, the police should be allowed to clear a path for pedestrian traffic. (*Id.*) Additionally, Ms. Ball urged the Task Force to consider a ban on performers being able to use the benches in their performance. (*Id.* at 29-30.)

In terms of an overarching fix to the current system, Ms. Ball advocated for a rotation of performers so that all individuals have an opportunity to occupy the most desirable locations. (*Id.* at 30.) These performers would also be required to have insurance, and to only have equipment which can be moved within three minutes. *Id.* at 30-32.

(5) Bruce Krasner

Mr. Krasner is the owner of multiple “T-Shirt Factory” stores in Ocean City, and has been on the Boardwalk since the summer of 1977. (*Id.* at 34.)

Mr. Krasner opined that street performers should be relegated to a separate area of the Boardwalk and be required to conduct their business in that area. (*Id.* at 34.) Mr. Krasner proposed that the spaces designated for performers should be limited to five by five feet. (*Id.* at 37.) Mr. Krasner also recommended that performers be rotated using a lottery system. (*Id.* at 38.)

Additionally, Mr. Krasner urged the Task Force to proscribe gas generators. (*Id.* at 35.) Mr. Krasner also objected to the fumes coming from the spray painting being done on the Boardwalk, as well as the lack of knowledge of the identities of the costume wearing characters. (*Id.* at 36.) He proposed requiring a license for street performers so that all identities are known. (*Id.*)

(6) Yadigar Karsli

Mr. Karsli owns “Love’s Lemonade” on 1st Street. (*Id.* at 39.) Mr. Karsli is a former street performer who moved to Ocean City in 2000. (*Id.*) Mr. Karsli used to perform in Venice Beach, California, and stated that in Venice Beach they do not permit henna tattoo or hair wrapping or any touching of people’s skin or hair. (*Id.*) Mr. Karsli informed the Task Force that he went to Los Angeles, Santa Barbara, and Las Vegas ten days prior to the hearing, and he was unable to apply for a permit to do henna tattooing or hair wrapping. (*Id.* at 40.)

Karsli advised that Venice Beach’s boardwalk is three times longer than Ocean City’s Boardwalk, and they do a lottery system with rotation of performers confined to an eight by eight space. (*Id.* at 40.) They also proscribe gas generators and battery lighting because of the safety issues created by them. (*Id.* at 40-41.)

(7) Jim Starck

Mr. Starck is a puppeteer and performer who has been in the area for 35 years, and performed on the Boardwalk specifically for 25 years. (*Id.* at 42.) Mr. Starck provided a list of performers whom he deemed worthy of remaining on the Boardwalk because they provide true entertainment. (*Id.* at 42-44.) While he did not believe a lottery system would work, he felt that all performers should be required to have permits or licenses to perform on the Boardwalk and that the cost of these permits should be \$100. (*Id.* at 44.)

Mr. Starck also recommended having auditions for the performers to be allowed on the Boardwalk, and the ones chosen will receive a permit or license. (*Id.* at 46.)

Mr. Starck expressed an interest in improving the locations for performers, and as such, he suggested that platforms be built adjacent to the ramps from the Boardwalk to the beach. (*Id.* at 44-45.)

(8) Jimmy Miller

Mr. Miller is the owner of “Somerset Jewelers” between Somerset Street and Wicomico Street; he has been at that location for 39 years. (*Id.* at 47.) Mr. Miller stressed that the most important issue on the Boardwalk is public safety. (*Id.* at 48.) He has received many complaints of empty suitcases or baggage being left on the Boardwalk, and it has resulted in his calling the Police Department to make them aware of the situation. (*Id.* at 48.)

Mr. Miller provided the example from May 28, 2014, when a block on the Boardwalk was cleared based on an unattended backpack left there, and a robot had to be brought in to verify that it was safe. (*Id.* 49.) Later in the hearing, Lt. Pacini addressed that incident, and more fully described the process of clearing the Boardwalk and the police response to the abandoned backpack. (*Id.* at 106.)

Mr. Miller proposed the Town adopt a lottery system and that generators be banned from the Boardwalk. (*Id.* at 48, 50-51.) Mr. Miller expressed that how the Boardwalk operated last summer cannot continue. (*Id.* at 50-51.) He referred to the current state of affairs as a constant battle, and noted the need for guidelines in order to protect the safety of the public. (*Id.*)

(9) Jessica Guthrie

Ms. Guthrie has worked on the Boardwalk for the past four years as a mermaid performer who also paints. (*Id.* at 52.) Ms. Guthrie acknowledged that there is a lot of overlapping of performers, and far too many henna artists on the Boardwalk. (*Id.*) Ms. Guthrie also noted that the Boardwalk should be family-friendly and cater to family-friendly entertainment, and that the pole dancer does not do that. (*Id.* at 53.)

While Ms. Guthrie did not believe a lottery system will work, she understood the need for having an identification requirement for performers. (*Id.* at 53-54, 55.) Still, she was not in favor of requiring performers to apply and pay for a permit or license, but only that they be required to carry identification. (*Id.* at 55-56.) She further stated that a lottery system with constant rotation would cause a great deal of congestion along the Boardwalk. (*Id.* at 54.) In Ms. Guthrie's eyes, the Boardwalk should remain a place for performances on a first come, first served basis. (*Id.*)

(10) Mike Mueller

Mr. Mueller has been a street performer for over ten years as an artist. (*Id.* at 57-58.) Mr. Mueller expressed his fear that additional rules and regulations will be created that affect his livelihood as an artist. (*Id.* at 59-60.) Mr. Mueller asserted that the current system of self-regulation was working, and that one thing to make the current situation better would be to create more spots for performers that are not on street ends. (*Id.* at 71-72, 76-78.) Additionally, Mr. Mueller wanted the Task Force to revisit N. Division Street as a potential place for performers to use. (*Id.* at 77-78.) To the extent that any changes shall be made, Mr. Mueller recommended minor, incremental changes be made to the current system so that the Town can see what will and will not work. (*Id.* at 80.)

After a brief discussion with Mr. Karsli on the record, Mr. Mueller also acknowledged the existence of problems with henna tattoos, potential dangers of body art, and the lack of accountability for individuals who may be harmed by henna tattoos obtained from Boardwalk performers. (*Id.* at 84-85.) Mr. Mueller viewed henna tattooing as a public health and safety issue, and did not see it as artistic expression. (*Id.*)

(11) Maggie Miller

Ms. Miller is the owner of “Somerset Jewelers” and has been on the Boardwalk for the past 39 years. (*Id.* at 90.) Ms. Miller was concerned that Ocean City is losing its image as a family-friendly town. (*Id.* at 92.) Ms. Miller informed the Task Force that people who once came to Ocean City as children have expressed to her that they are no longer going to visit or allow their children to be on the Boardwalk because they feel it is dangerous and that street performers are invasive. (*Id.* at 91-92.)

(12) Bill Champion

Mr. Champion testified earlier at the hearing on February 9, 2015. Chairman Shockley permitted Mr. Champion to speak to a few issues raised at this meeting. (*Id.* at 92.) Mr. Champion strongly believed that a permit and license system would solve the problem of ungrateful or aggressive performers. (*Id.* at 94.) Like Mr. Starck, he also promoted the idea of a \$100 fee for the permit. (*Id.*)

Mr. Champion also suggested setting aside a specific area for the circle shows, and limiting the time allowed for those performances, which would result in a rotation for the performers who gather those large crowds. (*Id.* at 95-96.)

Mr. Champion again asserted that the performers who cover their faces should be required to have their identities be known. (*Id.* at 98.) He did not believe a rotation

would work for all performers, and he is also against the pole dancer being permitted to perform on the Boardwalk. (*Id.* at 99-100.)

(13) Lt. Mark Pacini

In response to the testimony heard that day, Lt. Pacini addressed the Task Force regarding a number of issues. Lt. Pacini urged the Task Force to consider the size of the equipment that performers use if the Task Force were to limit the size of the spaces for street performers. (*Id.* at 103.) Lt. Pacini suggested that the Town's ordinance may have to be strengthened to address aggressive panhandling. (*Id.* at 104.) Lastly, Lt. Pacini retold his experience with the J-1 students who were hired by business owners to set up stands on the Boardwalk. (*Id.* at 106-107.) He implored the Task Force to consider these issues, as well as the issues he raised in his prior testimony. (*Id.* at 107.)

D. Session 4: Wednesday, March 25, 2015 1:00 PM

The Task Force met on March 25, 2015 in Session 4 to review the Draft Report that the Chairman prepared (with the assistance of the resources provided by the Town) to reflect the Task Force's discussion of the evidence and potential new regulations at the conclusion of Session 3. The Draft Report had been distributed to the Task Force members one week in advance of Session 4. At Session 4 each member discussed the Draft Report and proposed amendments to it. The Task Force voted on the proposed amendments and adopted the contents of the Final Report. The discussion of amendments and final votes were transcribed and the transcript is attached as part of Exhibit 1 to this Final Report. This Final Report was prepared by the Chairman (with the assistance of the resources provided by the Town) to reflect the Final Report adopted at Session 4. A black-lined copy of the Final Report, showing the changes from the Draft to Final Report approved by the Task Force is attached as Exhibit 9 to this Report.

E. Written Submissions

The Task Force received three written submissions from concerned citizens who identified varying issues and proposed solutions. (Each of these submissions is summarized below, and collectively, they are attached as Exhibit 7.)

(1) William A. Gibbs

Mr. Gibbs is the owner of the “Dough Roller” restaurants and “Breakers Hotel,” among other establishments; he is a life-long Ocean City resident and has been a business owner for the past 35 years. Last year, Mr. Gibbs experienced a marked decline in business due to what he perceives to be problems stemming from the Boardwalk performers. Specifically, he received a large number of complaints from his hotel guests regarding the noise levels from performers at late hours of the night. He has had guests check out of the hotel early due to the noise, and he has also witnessed children becoming very upset at the sight of costumed characters changing on the side streets.

Mr. Gibbs has also fielded complaints from parents of children who are upset with the offensive and lewd merchandise displayed on the Boardwalk. Further, Mr. Gibbs has been extremely embarrassed when guests and friends alike call to ask him about the “Ocean City Boardwalk pole dancer.” He believes that the pole dancer created an image for Ocean City that is not desired, and that the Town’s reputation is now suffering because of what is happening on the Boardwalk.

Mr. Gibbs advocates for legal changes to be made in order for Ocean City to regain prominence as a family-friendly environment that is safe and welcoming for all guests and their families.

(2) Jeff Albright

Mr. Albright is a Boardwalk property owner in Ocean City who writes that he believes in freedom of speech, but also believes that a program must be implemented that will be agreeable to all parties that protects the health and safety of the Town's citizens and visitors. His main goals are having a system that leads to Ocean City having the best, safest and healthiest Boardwalk in America.

Mr. Albright has received complaints from customers who are unable to sleep due to the repetition of the same music playing outside of their windows every day and night. Similarly, tenants and customers are subjected to the breathing in of fumes from a spray paint artist that covers his own face with a mask. Mr. Albright also expressed his concerns at the increase in costumed characters on the Boardwalk. Mr. Albright suggests that some sort of background check be enacted with respect to these characters.

Mr. Albright proposes that a rotation schedule for the buskers be instituted. The rotation would allow different performers to be at different locations each day and perform for varying audiences while the store owners and visiting guests are not subjected to the same performances on a daily basis.

(3) Douglas Armstrong and Joan Floyd

Mr. Armstrong and Ms. Floyd are longtime users of the Boardwalk, as well as proponents of free speech. Mr. Armstrong and Ms. Floyd, however, write that the right to free expression is not incompatible with the right to clean air. They feel that the Town is currently failing in its duty to protect the public health, safety, and general welfare due to the fact that the use and enjoyment of the Boardwalk has been diminished by the release of hazardous materials and noxious fumes into the air by certain performers.

III. REGULATION OF THE BOARDWALK AND THE CONSTITUTION

A. Basic Principles: The Boardwalk Is A Public Forum

For the purpose of analyzing restrictions of speech on public property, the Supreme Court has divided public property into various categories. *Christian Legal Society v. Martinez*, 561 U.S. 661, 679 n. 11 (2010); *Perry Ed. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). Public streets and parks are the “archetype of a traditional public forum.” *Frisby v. Schantz*, 487 U.S. 474, 480 (1988) (“speakers’ rights are at their apex”); see *Steinburg v. Chesterfield County Planning Comm’n*, 527 F.3d 377, 384 (4th Cir. 2008). In *Chase v. Town of Ocean City*, 825 F. Supp. 2d 599 (D. Md. 2011), the district court ruled that “the Ocean City boardwalk is a traditional public forum.” *Id.* at 614.

In a traditional public forum “[a]ny restriction based on the content ... of speech must satisfy strict scrutiny.” *Christian Legal Society, supra*, 561 U.S. at 679 n. 11. Strict scrutiny is a demanding standard which requires that “the restriction ... be narrowly tailored to serve a compelling government interest.” *Id.* When a restriction on speech is “content-neutral” – not aimed at suppressing only certain types of speech – the restriction need only pass an intermediate level of scrutiny. Thus, even in a traditional public forum, the government may impose reasonable “time, place, and manner” restrictions on speech provided that the restrictions “(1) are “justified without reference to the content of the regulated speech”; (2) are “narrowly tailored to serve a significant governmental interest”; and (3) “leave open ample alternative channels for communication of the information” that the speaker wishes to communicate. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); see also *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 468 (2009); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

A regulation is considered content-neutral as long as it serves a purpose unrelated to the content of the expression, even if enforcement of the regulation affects some messages but not others. *Ward, supra*, 491 U.S. at 791. The requirement that a restriction be “narrowly tailored to serve a significant governmental objective” means that the governmental goal would be achieved less effectively without the regulation. *Ward*, 491 U.S. at 798. The restriction need not be the least restrictive means available for achieving the objective, but must not be substantially broader than necessary. *Id.* at 800. A restriction may be too broad if there are numerous and obvious less burdensome and more precise alternatives. *Ward, supra*, 491 U.S. at 797 (citing *United States v. Albertini*, 472 U.S. 675, 689 (1985)). Whether there are “ample alternative channels for communication” is a very specific determination that will vary for each situation. The key question is whether the speaker’s ability to communicate effectively and reach the intended audience is threatened. *Id.* at 802; *see also, Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 655 (1981).

B. Street Vendors

Art and artistic expression are considered “speech” and are protected by the First Amendment. *Ward, supra*, 491 U.S. at 790 (recognizing that music is a protected form of artistic expression); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (dance); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975) (theater productions); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991) (acknowledging the artistic value of nude dancing); *Miller v. California*, 413 U.S. 15 (1973) (appreciating the value of “serious” works with artistic value, and distinguishing them from the obscene created for the ensuing commercial gain). Courts deciding the legality of a restriction on free speech balance the value of the speech against the importance of the governmental interest the restriction on expression is intended to serve. *Clark, supra*, at 307-08. Expression that is

considered by courts to be on the “margins of constitutional protection,” such as go-go dancing, may have little weight in these balancing tests. *Barnes, supra*, at 565-66. Expressive material does not lose its constitutional protection because it is sold. *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 756 n.5 (1988).

The Supreme Court has said very little about regulation of art or expressive material when it is sold in a public forum. Only two Circuit Courts of Appeal have addressed the issue of art vending – the Second and the Ninth. Maryland belongs to the Fourth Circuit. The district court relied on Second and Ninth Circuit cases in the district court’s *Chase* ruling. The two circuits have taken a similar, although not identical, approach to analyzing the permissible scope of governmental regulation of the sale of expressive material in a public forum.

The two Second Circuit cases relied on the district court were *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996) and *Mastrovincenzo v. City of New York*, 435 F.3d 78 (2d Cir. 2006), both dealing with a New York City Vendor’s Law. The Ninth Circuit cases cited by the district court are *Gaudiya Vaishnava Soc’y v. City of San Francisco*, 952 F.2d 1059, 1060 (9th Cir.1990); *One World One Family Now v. City of Honolulu*, 76 F.3d 1009, 1011 (9th Cir. 1995); *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365, 1366-67 (9th Cir. 1997); *White v. City of Sparks*, 500 F.3d 953, 954 (9th Cir. 2007); and *Hunt v. City of Los Angeles*, 638 F. 3d 703, 708 (9th Cir. 2011). Each case is discussed in turn below.

1. The Second Circuit’s Analysis

In New York City, the General Vendors Law (“Vendors Law”) requires that all street vendors obtain a merchandise license before selling non-food goods or services in public spaces. In 1979, the Vendors Law was amended to restrict the total number of

merchandise licenses available to 853, with an exception for veterans. The Vendors Law was also amended to exempt “newspapers, periodicals, books, pamphlets or other similar written matter” from the licensing requirements altogether.

In *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996), a group of visual artists sued the City, arguing that the enforcement of the General Vendors Law against art vendors violated their First Amendment rights. In that case, the Second Circuit ruled that the Vendors Law could not be applied to sellers of paintings, photographs, sculptures, and prints – which “always communicate some idea or concept” to the viewer, and thus merit full First Amendment protection. *Bery, supra*, at 696.

Bery remains binding precedent within the Second Circuit, but the scope and effect of the Opinion were significantly clarified in *Mastrovincenzo*. The plaintiffs in that case designed and sold hand-painted clothing featuring designs, words, and numbers in a “graffiti style.” *Mastrovincenzo, supra*, at 86. Given the City’s closed application list for vending permits, the plaintiffs were effectively barred from selling their works on the street. As in *Bery*, the plaintiffs in *Mastrovincenzo* challenged the application of the Vendors Law to prohibit them from selling their works. *Id.* at 87.

The Second Circuit ruled that to answer the question whether any given work is protected by the First Amendment, one has to determine whether the work’s “dominant purpose” was expressive or utilitarian. *Id.* at 95. The district court followed this analysis in *Chase*.

The Second Circuit ruled that the *Mastrovincenzo* plaintiffs’ work was not *presumptively* entitled to First Amendment protection, but rather, was *potentially* expressive. *Id.* at 93 (emphasis added). It ruled that only “paintings, photographs, prints and sculptures are “presumptively expressive,” as the court held in *Bery*. *Id.* (citing *Bery*,

97 F.3d at 696). The court found that everything else is “potentially expressive.” *Id.* at 94. The *Mastrovincenzo* plaintiffs argued that they were selling “paintings” – entitled to automatic First Amendment protection under *Bery*, only they painted on non-traditional shirts and hats. *Id.* at 86, 103. The court, however, rejected that argument, holding that only paintings on canvas were “presumptively” expressive. *Id.* at 104. The court then explained that the next question that must be asked in order to determine whether the work was expressive, and thus protected by the First Amendment, was whether the works’ utilitarian aspects outweighed its non-utilitarian attributes – *i.e.*, “whether [the works’] non-expressive purpose is dominant or not.”¹ *Id.* at 91. Using that test, the court found that the *Mastrovincenzo* plaintiffs’ works had a predominantly expressive purpose and did merit First Amendment protection. *Id.* at 105.

Nevertheless, the court held that the City of New York could ban the *Mastrovincenzo* plaintiffs from selling their “art” because the city was imposing reasonable time, place and manner restrictions on their sale, had substantial and non-content-based reasons for imposing the restriction and left open ample alternative channels of communication. *Id.*

Specifically, the court found that New York City had articulated various valid interests: “(1) keeping the public streets free of congestion for the convenience and safety of its citizens, (2) maintaining the tax base and economic viability of the city, and (3) preventing the sale of stolen, defective or counterfeit merchandises.” *Id.* at 99 (internal quotations omitted). The court found that the “dispositive issue” was whether the

¹ Note that the *Chase* consent decree defined “expressive material” in similar terms: “For purposes of this Permanent Injunction, ‘Expressive Material’ is defined as any item or items that (1) have been created, written or composed by the person who sells, rents or exchanges them for a donation; (2) are inherently communicative; and (3) have only nominal utility apart from their communicative value.” *See* Exhibit 2 (emphasis in original).

significant governmental interests that the Vendor Law promoted “would be achieved less effectively absent the regulation.” *Id.* at 98 (quoting *Ward*, 491 U.S. at 799).

Accordingly, the court ruled that the requirement that “‘ample alternative channels’ exist does not imply that alternative channels must be perfect substitutes for those channels denied to plaintiffs by the regulation at hand,” nor did it mean that New York City “was required to allow the plaintiffs to sell their work directly to the public in an ideal venue.” *Id.* at 101-02. The court concluded that “whether a regulation is narrowly tailored can only be determined by considering the scope of its application relative to the government objectives being pursued, taking context into account.” *Id.* at 102.

2. The Ninth Circuit’s Analysis

The Ninth Circuit cases stand for the proposition that material that is predominantly expressive is protected by the First Amendment, but that even protected material can be regulated if the regulation (1) is necessary to support an articulated and well-supported state interest, and (2) is carefully calibrated to address the stated interest. Each of the Ninth Circuit cases cited by the district court is discussed briefly below, in chronological order. It is important to identify the state interests the court deemed sufficient to support calibrated regulation of expressive conduct and the nature of permissible regulation.

Gaudiya Vaishnava Soc’y v. City of San Francisco, 952 F.2d 1059 (9th Cir. 1990), addressed a San Francisco ordinance that required nonprofit groups selling “message-bearing merchandise such as T-shirts, books, buttons, stuffed animals, jewelry and bumper stickers” in city public places to apply for a peddler’s permit. *Id.* at 1060. The court found that the ordinance violated the First Amendment because it placed no specific

limits on the Chief of Police's discretion to issue or deny a license and thus granted him "complete discretion." *Id.* at 1066. Accordingly, the court prohibited the city from enforcing the ordinance against any non-profit organization "with respect to the sale of merchandise which is inextricably intertwined with a statement carrying a religious, political, philosophical or ideological message." *Id.*

One World One Family Now v. City of Honolulu, 76 F.3d 1009 (9th Cir. 1995), involved a Honolulu ordinance that banned on city sidewalks and public places the sale by non-profit organizations of T-shirts imprinted with various religious and political philosophies of the plaintiff organizations. *Id.* at 1011. The court distinguished *Gaudiya*, saying that the ordinance in that case granted the police chief unbridled discretion to grant peddling permits whereas, by contrast, Honolulu's ordinance was a flat ban. The court upheld the Honolulu law, finding that Honolulu had demonstrated a substantial interest in (1) "protecting the aesthetic appearance of their communities by 'avoiding visual clutter;'" (2) maintaining the orderly movement of pedestrians on Waikiki's crowded sidewalks; and (3) "protecting local merchants from unfair competition." *Id.* at 1013. In upholding the law, the court noted "the deference due the city council's determinations of necessity." *Id.*

Perry v. Los Angeles Police Dept., 121 F.3d 1365 (9th Cir. 1997), addressed a Los Angeles ordinance that banned commercial activity on the Venice Beach boardwalk, but made an exception for non-profits. *Id.* at 1366-67. A street musician who wanted to sell his recorded music and an "activist" who wanted to sell "literature, books, t-shirts, bumper stickers, buttons, and other articles bearing political slogans" filed suit. *Id.*, 121 F.3d at 1367. The Ninth Circuit reversed the course it had set in *One World*, and found that, although the government had a legitimate interest in protecting the safety and convenience of persons using a public forum, in promoting public safety, in the orderly

movement of pedestrians, and in protecting the local merchant economy, the statute was overbroad and thus violated the First Amendment. *Id.* at 1371. “Given the significant state interests of the City, the statute is overly inclusive because it prohibits not only purely commercial activities, but also protected expressive activities, like those of plaintiffs here. Because the distinction between expressive activities by members of nonprofit organizations and expressive activities by others is not narrowly tailored to advance the government’s interests, the statute is unconstitutional on its face.” *Id.* The Ninth Circuit distinguished *One World* by saying that the restriction in that case “did not discriminate against certain types of speech depending on the speaker” – *i.e.*, did not discriminate between for-profits and non-profits. *Id.* The court did not say whether an ordinance that banned *all* commercial activity on the Venice Beach boardwalk would have been found constitutional.

In *White v. City of Sparks*, 500 F.3d 953 (9th Cir. 2007), the City of Sparks, Nevada prohibited the sale of merchandise in its parks and limited sales in the redevelopment area known as Victorian Square to those vendors having permits. *Id.* at 954. In an effort to comply with *Gaudiya*, the Sparks City Council made a limited exception for items that had received the pre-approval of city employees through a “First Amendment exception” to the vendor-permitting ordinances. *Id.* To gain such pre-approval, an item had to have been submitted to the city and determined by city officials to convey an obvious religious, political, philosophical, or ideological message. *Id.* The ordinance was challenged by a “painter of nature scenes.” *Id.* The court noted that the Supreme Court had not spoken directly on the protections afforded visual art, but had been clear that the arts and entertainment constitute protected forms of expression under the First Amendment. *Id.* The court then invalidated the Sparks ordinance, holding that “so long as it is an artist’s self-expression, a painting will be protected under the First

Amendment, because it expresses the artist’s perspective.” *Id.* at 956. (Notably, the court specifically refused to rule whether all paintings merit First Amendment protection, including “copies of another artist’s work or paintings done in an art factory setting.” *Id.* at 956 n. 4) Thus, the Ninth Circuit expanded *Gaudiya*, in that it held that not only were items that conveyed a religious, political, philosophical, or ideological message protected by the First Amendment, but also all “inherently expressive,” material was protected. *Id.* at 955.

Hunt v. City of Los Angeles, 638 F.3d 703 (9th Cir. 2011), presented a challenge to two Venice Beach ordinances, one enacted in 2004, the other in 2006. *Id.* at 708. Both required that any person engaging in allowable activities on the boardwalk obtain a “Public Expression Participant Permit,” and spaces on the boardwalk where expressive activity could be conducted were assigned pursuant to a weekly lottery system. *Id.* at 707. “Allowable activities” were defined in the 2004 ordinance to mean selling “merchandise constituting, carrying or making a religious, political, philosophical or ideological message or statement which is inextricably intertwined with the merchandise.” *Id.* The Ninth Circuit found that plaintiffs, sellers of shea butter and incense, were not clearly in or out of that category and, therefore, that the law was “void for vagueness.” *Id.* at 711.

[A] police officer would have to engage in a ‘highly fact-specific analysis’ to determine whether a person selling merchandise is relaying a message, whether that message qualifies as being religious, political, philosophical, or ideological, and whether that message is inextricably intertwined with the products being sold. Without any clear guidance from [the 2004 law] on these issues, such determinations would necessarily be left to the subjective judgment of the officer. ... [T]his lack of clarity may operate to inhibit the exercise of freedom of expression because individuals will not know whether the ordinance allows their conduct, and may choose not to exercise their rights for fear of being criminally punished.

Id. at 712-13.

The 2006 ordinance, on the other hand, prohibited all vendors and vending, except for (1) “newspapers, leaflets, pamphlets, bumper stickers or buttons”; (2) “items which have been created, written or composed by the vendor: books, cassette tapes, compact discs, digital video discs, paintings, photographs, sculptures or any other item that is inherently communicative and has nominal utility apart from its communication”; and (3) “Performances by performing artists and musicians.” *Id.* at 707. Finding that the second exception above (for “inherently communicative” items) was not too vague and clearly proscribed the sale of shea butter and incense, the court went on to uphold the 2006 ordinance. *Id.* at 714-15. (The court never ruled on the lottery and permit system, presumably because the plaintiffs would have been ineligible for a “Public Expression Participant Permit.”)

Hunt was not the last word with respect to the Venice Beach regulations, however. In *Dowd v. City of Los Angeles*, 2013 WL 4039043 (C.D. Cal. Aug. 7, 2013), a district court considered the 2008 ordinance that there “was a space allocation system which assigned performers to particular spots to effectively distribute the limited space of the Boardwalk.” *Id.* at 8. The city defended the permit and lottery system, which it said “provided a mechanism for officers to resolve disputes about space allocation in a neutral manner,” was “designed to discourage pre-dawn arrival at the Boardwalk in order to secure a space” and used to “expand the pool of potential performers to include speakers who might not assert themselves in a first-come-first-serve situation.” *Id.* The district court found that the ordinance appeared to be carefully crafted to resolve the problems identified in the factual findings and upheld the lottery and space system. *Id.* The court also upheld the height restriction, which limited performers and vendors to using items no more than 4 feet above ground in any designated space:

[T]he regulation, while limiting some speech, is not substantially overbroad; Plaintiffs have some limitations on their performances—they cannot use microphones of a certain height, and performers accustomed to performing from ladders are unable to do so—but the limitations leave ample channels of communication while advancing the City’s interests. The limitations placed on Plaintiffs’ performances are not so substantial as to lead the court to micromanage the City’s regulation of public safety and aesthetics.

Id. at 13.

C. Street Performers

Street performances are a form of expression protected by the First and Fourteenth Amendments of the United States Constitution. *See e.g., Davenport v. City of Alexandria*, 710 F.2d 148, 150 (4th Cir.1983) (en banc). Beyond that, much of the law applicable to street performances is undefined. So, for example, questions regarding what is a street performer, whether a street performer can be licensed or even barred altogether under certain circumstances, and to what extent the government can regulate street performances, have no conclusive answers. As with other reasonable time, place and manner restrictions, the key is that a government may not limit speech based on its content, and may impose only those restraints that are “narrowly tailored to serve a significant governmental objective” and leave open “ample alternative channels for communication.” *Ward, supra*, at 791.

In *Davenport v. City of Alexandria*, 710 F.2d 148 (4th Cir. 1983), the Fourth Circuit (which includes Maryland) considered an ordinance enacted by the City Council of Alexandria, Virginia. The ordinance prohibited performances and exhibitions on the sidewalks, walkways or other public property of the central business district of Alexandria, and provided that a person who wanted to perform in an area where performance was allowed had to first obtain a permit. *Id.* at 149-150. The ordinance was

challenged by a street musician. The Fourth Circuit upheld the licensing requirement but, after sending the case to the lower court for factual development, upheld the lower court's finding that "the total ban of street performers from public sidewalks throughout the [central business district] and for all hours is much more broad than is necessary to satisfy any interest in public safety the city has" and that "there has been shown no safety interest substantial enough to outweigh the plaintiff's First Amendment interests." *Davenport v. City of Alexandria*, 748 F.2d 208, 210 (4th Cir. 1984).

In 2001, the Eleventh Circuit upheld an ordinance that prohibited street performances in the four block area of historic St. Augustine. *Horton v. City of St. Augustine, Fla.*, 272 F.3d 1318 (11th Cir. 2001). The ordinance defined "performance" as follows:

Perform includes, but is not limited to acting, singing, playing musical instruments, pantomime, mime, magic, dancing, and the sale of visual art and wares, which shall include drawings and paintings applied to paper, cardboard, canvas or other similar medium when such art is applied to the medium through the use of brush, pastel, crayon, pencil, or other similar object, and the creation, display and/or sale of crafts made by hand or otherwise.

The following activities shall be prohibited because of issues of safety to the public: Any activity involving spray painting or use of aerosols or propellants, including air pressure, to spray or apply any liquid; the use of fire; or the use of any weapon as defined within Florida Statutes.

Id. at 1321. The Court upheld the ordinance as a reasonable time, place and manner restriction, citing the city's interest in crowd and traffic control. *Id.* at 1333-34. There, the city had filed a transcript of a Commission hearing and several affidavits to document its governmental interests. *Id.* at 1334 n. 19. The issues discussed in these materials included congestion, noise, illegal activity, rudeness, and diminished aesthetics. *Id.* Curiously, this was not the city's first attempt to regulate street performers. Some twenty

years earlier, the city had enacted an ordinance prohibiting street performances on all public property within the city, but a district court held the ordinance unconstitutional on the ground that it was not narrowly tailored to serve a significant government interest. *Id.* at 1328 n. 9.

More recently, in *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009), the Ninth Circuit addressed street performance issues. This case dealt with the Seattle Center Campus Rules, applicable to street performers in the twenty-three acres of outdoor public park space contained within an 80-acre expanse of public space. *Id.* at 1035. The plaintiff, Magic Mike, a street performer, challenged five of the Rules: Rule F.1, which required “street performers” to obtain a permit before performing at the Center and to wear a badge displaying that permit while performing; Rule F.2, which set forth the terms and conditions for acquiring a “Street Performer Permit”; Rule F.3.a, which barred street performers from “actively solicit[ing] donations”; Rule F.5, which limited street performances to sixteen designated locations; and Rule G.4, which prohibited all Seattle Center visitors, other than Center employees and licensed concessionaires, from engaging in “speech activities” within thirty feet of a “captive audience.” *Id.*

The Court invalidated all but F.5., the 16 designated locations rule, which it sent back to the trial court for factual development about how that rule would serve the government’s interests. *Id.* at 1048-50.

The court was critical of the permitting requirement, which it found would apply to all individual speakers who wished to express themselves in a public forum and was not limited to only those performers who sought to attract a crowd of a sufficiently large size, and thus was overbroad. *Id.* at 1040. In addition, the court found that the Rules were not narrowly tailored and that Seattle could accomplish its goals (protecting the

safety and convenience of park-goers by reducing territorial disputes among performers, deterring harassment of audience members, and clarifying and coordinating potentially competing uses) in less restrictive ways. *Id.* at 1041. Notably, it was the fact that the Rules did not restrict performers to a particular territory or to a particular time period within a given territory that the court thought made the lottery system not a good “fit” in light of the government’s objectives. *Id.*

Even more recently, in *Peck v. City of Boston*, 750 F. Supp. 2d 308 (D. Mass., 2010), a district court found that there were disputed factual issues that required a jury to determine whether Boston’s restriction of performers at Faneuil Hall to a designated “performance space” was a reasonable time, place and manner regulation. *Id.* at 316. In dispute were issues regarding the city’s motivation for the restriction (whether it was created for the purpose of addressing noise or to secure the Faneuil Hall property and ensure public safety) and the size of the performance space. *Id.* at 314. (The plaintiff, whose act consisted of appearing in a gold costume, painted in gold, claimed it was 225 square feet; the city said it was 5,000 square feet. *Id.* at 316.)

The latest word comes from the Fourth Circuit in *Reynolds v. Middleton*, 2015 WL 756884 (4th Cir. Feb. 24, 2015). There, the court considered a law that banned charitable solicitations (*e.g.*, panhandling) on highway medians. *Id.* at 1. The Fourth Circuit stressed the importance of a developed factual record. *Id.* at 3. Relying on a recent Supreme Court opinion, *McCullen v. Coakley*, 134 S.Ct. 2518, 2539 (2014), having to do with Boston’s creation of a 35 foot “buffer zone” around abortion clinics, the court held that the county could rely on common sense and logic to conclude that, by removing solicitors from county roadways, the ordinance reduced the number of people engaging in a dangerous activity and thus furthered the county’s safety interest in a direct and material way. *Reynolds, supra*, at 6. Nevertheless, reliance on common sense and logic

alone was not enough to sustain the regulation. In addition, the county needed to prove that it actually tried other, less restrictive, methods to address the problem and that those methods had failed. *Id.* at 6. In other words, the county had to show that alternative measures would fail to achieve the government’s interests, “not simply that the chosen route is easier.” *Id.* at 8. Because there was no evidence that the county ever tried to improve safety by prosecuting any roadway solicitors who actually obstructed traffic, or that it ever even considered prohibiting roadway solicitation only at those locations where it could not be done safely, the county could not prove that it passed the “reasonable time, place and manner” test. The court did not simply rule in favor of the plaintiff, however. Instead, it found that the county should have an opportunity to gather and present evidence sufficient to satisfy the *McCullen* standard, so it remanded the case to the district court. *Id.*

IV. THE VENICE BEACH, CALIFORNIA ORDINANCE: ADDRESSING SIMILAR ISSUES

A jurisdiction analogous to Ocean City for purposes of Boardwalk regulation that has adopted ordinances that have been subjected to review in the federal courts is Venice Beach, in Los Angeles. Accordingly, the most relevant portions of the Venice Beach ordinance are discussed and set forth below.

In 2004, the City of Los Angeles adopted a Venice Beach Boardwalk regulation that banned all commercial activity on the Boardwalk, except that it allowed permit holders to sell “merchandise constituting, carrying or making a religious, political, philosophical or ideological message.” *Hunt, supra*, at 712-13. When challenged, the Ninth Circuit Court of Appeals found that the description of permitted activity in the ordinance was unconstitutionally vague. *Id.*

In 2006, Los Angeles amended its Venice Beach Boardwalk ordinance. The ordinance continued to ban all sales, except it created exceptions that were less vague, so that the ban did not apply to:

(1) Any individual or organization vending newspapers, leaflets, pamphlets, bumper stickers or buttons;

(2) Any individual or organization that vends the following items, which have been created, written or composed by the vendor: books, cassette tapes, compact discs, digital video discs, paintings, photographs, sculptures or any other item that is inherently communicative and has nominal utility apart from its communication;

Although an item may have some expressive purpose, it will be deemed to have more than nominal utility apart from its communication if it has a common and dominant non-expressive purpose. Examples of items that have more than nominal utility apart from their communication and thus may not be vended under the provisions of this section, include, but are not limited to, the following: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals;

(3) Performances by performing artists and musicians.

LAMC § 42.15.

As stated above, in *Hunt*, the Ninth Circuit Court of Appeals found that the revised 2006 Venice Beach ordinance was not unconstitutionally vague, but instead defined the merchandise that could be sold in such a way that both police officers enforcing the law and potential street vendors would know what was allowed. *Id.* at 714-15.

Note that the terms of “performer” and “performance” are expressly defined in the Venice Beach ordinance:

11. Perform, Performing, Performance or Performances. To engage in any of the following activities on public property: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting,

engaging in magic, creating visual art in its entirety, presenting or enacting a play, work of music, work of art, physical or mental feat, or other constitutionally protected entertainment or form of expression. The terms Perform, Performing, Performance or Performances shall not include:

- (a) The application of substances to others' skin, including but not limited to, paints, dyes and inks;
- (b) The provision of personal services such as massage or hair weaving, cutting or styling;
- (c) the completion or other partial creation of visual art;
- (d) the creation of visual art which is mass produced or produced with limited variation; or
- (e) the creation of Handcrafts.

12. Performer. A Performer is a Person who Performs. Performer includes the employers, employees, and agents of a Performer. Indicia of being a performer include, but are not limited to, setting up performance equipment, staging or orienting the performance towards the public, performing in the same location for an extended period of time, performing in the public over multiple days, seeking voluntary contributions through passing around a hat or leaving open an instrument case or other receptacle, and soliciting donations after a performance.

LAMC § 42.15. (It is unclear whether costumed characters would fall within the definition of “performer.” According to an L.A. City Attorney, costumed characters do not come to Venice Beach; he thinks because it is not profitable given the nature of tourists in that area.) The preamble to the current Venice Beach ordinance states as follows:

B. Findings and Purposes. The City Council of the City of Los Angeles finds and declares as follows:

1. The Boardwalk and Recreation Area constitute a major tourist attraction in the City, hosting approximately 16 million visitors annually. The Boardwalk and Recreation Area are limited spaces geographically, located in a narrow, linear City park that is bounded by the beach to the West and private property to the East. The total width of the Boardwalk is

only ten feet in certain sections and only as wide as 50 feet in other limited areas. The space is further constrained by the fact the Boardwalk and Recreation Area serve as emergency ingress and egress routes.

2. Historically, visitors, including tourists, have been drawn to Venice beach because, the Boardwalk and Recreation Area served as a traditional public forum for performance and visual artists, as well as other free speech activity. Vendors of Food, Goods and Merchandise viewed the large crowds of visitors to the Boardwalk and Recreation Area as a pool of potential customers and Vending proliferated. As the numbers of commercial Vendors increased, the number of Performers and persons engaging in free speech activities decreased both because of the limited amount of space and because of the change in atmosphere from a vibrant center of art and expression to a commercial “flea market” atmosphere. Competing interests for space on the Boardwalk and Recreation Area intensified and physical altercations for space and disturbances of the peace resulted in law enforcement responses and arrests.

3. Unregulated Vending and Performances adversely affect the historic character of the Boardwalk, hamper rather than encourage a wide variety of performances, visual artists and other free speech activity, as well as jeopardize the public safety of visitors to the Boardwalk, resulting in an economic and cultural loss to the City. Therefore, the Boardwalk requires reasonable time, place, and manner restrictions to retain its unique historic character as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the commercial life of the Boardwalk, and ensure the safety and enjoyment of residents, visitors, advocates, artists, 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 City.

Id. The space allocation/rotation provision in the Venice Beach ordinance states:

E. Allocation and Use of Designated Spaces. The City’s Board of Recreation and Parks Commissioners shall designate a total of 205 spaces on the Boardwalk, referred to as the “Designated Spaces”. The Designated Spaces will be available for use in accordance with a first-come, first-served system or any other legally permissible allocation system adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, posted at the Recreation Office for at least ten (10) days prior to implementation.

The 205 Designated Spaces shall be made available for the activities described in Subsection D. above. Five of the Designated Spaces shall be double-sized, large act spaces for Performers whose number of Performers plus audience can be anticipated to exceed 25 Persons. Two of the regular-sized Designated Spaces shall be made available for Persons engaging in any activity that is described in Subsection D. and who are predominantly giving away Food. The remainder of the regular sized, Designated Spaces shall be made available for Persons engaging in any exempt activity described in Subsection D.

Persons using the 205 Designated Spaces are subject to, and shall comply with, the following restrictions and the Program Rules adopted by the Board:

1. The five double-sized, large act Performer spaces historically have been used by Performers (such as acrobats) whose performances require more space than is available in a single-sized, Designated Space, and have been used by Performers who attract large crowds due to the nature of their performances. The five, double-sized, large act Performer spaces are the only spaces able to safely accommodate large scale performances or a large audience and, therefore, in order to facilitate a variety of Performances in these double-sized spaces, the Performer spaces are subject to a rotation requirement, whereby each Performer using one of the five Performer spaces shall relinquish the space on the hour, every hour, whenever another Performer is waiting to use the Performer space in which the Performer is Performing.

Id. (The Venice Beach ordinance is attached in its entirety as Exhibit 8.)

V. THE CURRENT LAW IN OCEAN CITY REGULATING PERFORMANCES AND SALES ACTIVITY ON THE BOARDWALK

A. The Town Of Ocean City Ordinance

In 2011, the City Council adopted an ordinance (Section 62 of the Code of the Town of Ocean City) that required all street vendors and performers to confine themselves to the street ends, required all street performers to register with the Town, and banned all sales by street performers and vendors.

That ordinance was challenged in federal district court. The lead plaintiff in that case was Mark Chase, who is a member of the Task Force that is submitting this report. As stated earlier, the district court found that some parts of the ordinance were necessary to protect public health and safety, while others unnecessarily and impermissibly curtailed First Amendment rights to free expression. *Chase v. Town of Ocean City*, 825 F. Supp. 2d 599 (D. Md. 2011).

In brief, the district court upheld that portion of the Town law that restricted street performers to certain parts of the Boardwalk (the street ends, with the exception of the end of N. Division Street, from which performers were excluded completely). *Id.* at 620. The district court, however, struck down the licensing requirement, and ruled that the Town could not prohibit the sale of “expressive materials” by street vendors. *Id.* at 630.

Although the district court’s 2011 Order defined “expressive materials,” enforcement of the law has posed challenges. Specifically, police officers charged with enforcing the law often have had to decide (and not known how to decide) whether any given item sold on the Boardwalk was protected “expressive material.” The Order defines “expressive materials” as follows:

any item or items that (1) have been created, written, or composed by the person who sells, rents, or exchanges them for a donation; (2) are inherently communicative; and (3) have only nominal utility apart from their communicative value.

a. By way of example, and not limitation, the following items ordinarily are inherently communicative and have only nominal utility apart from their communicative value: books, pamphlets, cassette tapes, compact discs, digital video discs, paintings, photographs, and sculptures.

b. By way of example, and not limitation, the following items ordinarily either are not inherently communicative and/or have more than nominal utility apart from their communicative value: housewares,

appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals.

See Exhibit 2.

B. How Police Implement Current Law

Immediately following the *Chase* ruling, the Town of Ocean City set about educating the persons responsible for enforcing the law. To that end, the Police Department sought guidance from the City Solicitor and then, through Lt. Pacini, trained every police officer responsible for policing the Boardwalk. In addition, Lt. Pacini gave a presentation to local merchants about the new law and put out an educational flyer for Boardwalk performers and merchants. (February 9, 2015 Hearing Tr. at 15.) Lt. Pacini was designated the “go-to” officer with respect to Boardwalk regulation, and all questions or issues encountered by other police officers patrolling the Boardwalk were brought to and resolved by him. (*Id.* at 16.)

Lt. Pacini describes enforcement of the ordinance as “a daunting task” and noted that he was called upon to respond to at least one Boardwalk-related issue on a daily basis. (*Id.* at 13: 19-20, 16.) Resources (including all of the time and efforts of Lt. Pacini, one of the Police Department’s most senior officers) were diverted from other pressing law enforcement needs in order to handle Boardwalk regulation. (*Id.* at 19.)

The Town operates under a red light/green light system referred to as “Gray Area Expressive Material.” (*Id.* at 14:9-10.) Whenever a street merchant sets up on the Boardwalk to sell items that are clearly non-expressive, the police do not permit him or her to conduct business. Sellers of items that obviously are expressive (*e.g.*, paintings on canvas) are allowed to carry on their business. A police officer who encounters the sale of items that are not clearly one thing or the other confers with Lt. Pacini, who is responsible for giving a red or green light to any item as to which there is doubt. If Lt.

Pacini determines that an item falls into a “gray area,” and he is in doubt as to whether it is or is not “expressive,” sales of the item are permitted until Lt. Pacini has consulted with the City Solicitor’s office.² Once counsel has given the item either a red or green light, Lt. Pacini proceeds accordingly. (*Id.* at 14.)

C. Issues On The Boardwalk Under Current Law

Crowds that block the tram line, prevent emergency access to the Boardwalk, keep tourists from moving and generally present a safety problem are a major concern. (*Id.* at 23.) Some of the performers put up elaborate signs (which rankles store merchants, who must pay a fee in order to put out a sign); some use public facilities, such as benches or the sea wall, to hold their wares; others rope or chain off areas so that others cannot encroach on their space; others leave property behind to “stake out” their spots. (*Id.* at 24-26.)

D. Violations Of Other Laws

The proliferation of street performers has encouraged merchants who operated out of traditional brick and mortar establishments to violate the zoning laws by bringing their business out onto the Boardwalk where they could better compete with street vendors. Thus, for example, outdoor stands selling henna tattoos (which have previously been treated by law enforcement as “expressive” and, accordingly, were permitted to be sold on the Boardwalk) have been set up and staffed by store owners or renters who sell henna tattoo services inside their stores. (*Id.* at 19-21.) Lt. Pacini testified regarding one incident in which a store merchant set up a henna stand directly in the spot where a street

² On the day that he testified, Lt. Pacini had received an inquiry about one such item: jewelry made by the person who wanted to sell it. Other items and/or performers that he deemed to fall within the “gray area” were books, CDs of music that the seller was not performing, paintings that the seller was not painting, tarot card readers and henna tattoo artists. *Id.* at 20.

performer/vendor had set up – actually moving the street vendor’s stand out of the way, and then threatened to kill the street vendor. (*Id.* at 36-37.) Because there is a great deal of animosity and competition for space between traditional brick and mortar merchants of henna tattoos and the street vendors, Lt. Pacini and his staff devote a great deal of time and effort to pursuing these zoning violators, instead of engaging in other law enforcement activities.

A group of individuals with whom Lt. Pacini has not known how to deal are the “cartoon characters” – individuals who dress up as well-known cartoon characters and then ask for tips after allowing themselves to be photographed by tourists. The cartoon characters attract children and tend to wear costumes that hide their faces. Last summer, some of the brick and mortar merchants decided to get in on the act, so they had their employees (many of whom were students with J-I visas) put on a costume, go outside and collect tips from tourists. (*Id.* at 25-26.) Usually, the merchants paid the student workers (whose visas would not have allowed them to “perform” on the Boardwalk) an hourly wage, while the merchants retained the much greater tip earnings. (*Id.* at 26).

At one point, Lt. Pacini wondered if cartoon characters were violating a copyright or trademark. He contacted in-house counsel at the Disney Co. and the company was unwilling to get involved. (*Id.* at 21.) Other types of street performers/vendors who raise concerns for law enforcement and who might be acting in violation of other laws are: disc jockeys and musicians who play amplified music; performers who erect stages and platforms; impersonators; performers who bring weapons onto the Boardwalk; performers who produce spray paint fumes or use generators, gasoline, umbrellas and a dance pole on the Boardwalk; a hula hooper who asks children in the audience to join her in performing; performers/sellers whose performances/sales involve the touching of another – face painters, henna tattooists, hair braiders and featherers. (*Id.* at 21-2, 27.)

VI. RECOMMENDATIONS

The preceding Sections I through V, the background portion of the Task Force Report, were approved by the Task Force. After hearing live testimony, considering the written submissions and taking into account our understanding of the law, this Task Force recommends as follows:

A. Define “Expressive Material” And “Performer”

Both the creation, distribution and sale of expressive material and performances are entitled to First Amendment Protection. (Below, these activities will sometimes be referred to as “expressive activity.” Further, both vendors of expressive material and street performers will sometimes be referred to as “street performers” or “performers.”) Multiple issues have arisen as a result of uncertainty about whether any given item or act qualifies as “expressive” or as a “performance.” For instance, the Ocean City police department has had to divert resources – both time and manpower – to determining what activities are expressive activities permitted on the Boardwalk. Lt. Mark Pacini, one of the most experienced officers in the Ocean City Police Department, devotes all of his time during the peak tourist season (roughly from Memorial Day to Labor Day) to policing the Boardwalk and resolving issues encountered by performers, merchants and other police officers who patrol the area.

Dealing with the uncertainties created by the current ordinance is difficult and time-consuming. If an effective, efficient system were put in place to determine which activities are expressive activities, Lt. Pacini’s time and efforts, as well as those of other police officers, could be spent dealing with more traditional law enforcement matters. Likewise, performers and street vendors are frustrated by not knowing whether or not they will be or are engaging in permissible activity. Boardwalk merchants are also

frustrated by not knowing what performances and street sales are permitted in close proximity to their stores and whether they should attempt to extend their activities onto the Boardwalk. Because everyone involved wants more certainty regarding what is allowed, many have asked that the Town law explicitly define what is permitted on the Boardwalk with respect to expressive activity by street vendors and performers.

Under the current system, one person (in law enforcement) has the authority and obligation to interpret the law as amended by the district court ruling, and determine whether any given activity is expressive, and can therefore be conducted on the Boardwalk. These decisions many times have to be made with little time for reflection and in the midst of a crowd and pedestrian traffic on the Boardwalk. Further, because uncertainty exists as to whether or not any given use will be allowed, individual artists and performers may unnecessarily censor themselves.

The current system of Boardwalk operation results in overcrowding, disorder and unnecessary conflict. The Boardwalk is not large enough to accommodate every performer who wants to perform in the prime, most heavily traveled portions of the Boardwalk. Consequently, there are often altercations over a desirable spot, and conflicts among performers about who has priority rights to any given location, often leaving behind personal property in an attempt to stake out entitlement to a prime site. Because there are so many performers on the Boardwalk, tourists often are overwhelmed. The overcrowding also results in many store entrances being blocked by performers or the tourists watching them and pedestrian traffic on the Boardwalk is severely hampered. One witness described the proliferation of sidewalk performers and vendors as “untenable.” (February 18, 2015 Hearing Tr. at 51.)

Other jurisdictions have encountered similar problems and have addressed them by putting into effect regulations that leave little doubt as to what activities are allowed and not allowed and where expressive activity can be conducted. Accordingly, the Task Force recommends that Ocean City adopt an ordinance that defines both “expressive material” and “performance” so as to eliminate uncertainty. By defining these terms, specifying what will be permitted and where it will be permitted, Ocean City can alleviate congestion and conflict on the Boardwalk and improve the experience for all involved without impinging on freedom of expression guaranteed by the First Amendment.

The definition of performance below excludes henna tattoos and other analogous personal services in which paint or dye is applied to the skin or hair or if there is touching of the person for whom the services are performed. Many have expressed grave concerns about “henna tattoo artists” for both health and safety reasons. Henna tattooists set up a table or stand and offer to either sell or for a gratuity (sometimes for an explicitly stated amount) draw on the arm, wrist or other part of a customer’s body using what they refer to as “henna.” The ink used to draw “henna tattoos” is often hair dye that can irritate the skin. Moreover, these individuals often have no accountability. There have been instances when individuals who had adverse reactions to the dyes tried to go back to the stand where they had the “tattoo” applied to learn more information about what had been done to them, only to find that the stand was gone. The Worcester County Health Department has been called to investigate the use of dyes and pigments in these sales and performances, but has concluded that it lacks the power to regulate these services because they are not performed inside licensed establishments. Many indoor establishments that featured tattoo artists inside their stores have concluded that it is necessary to move their operations outside in order to better compete with henna tattoo street vendors/performers.

Tattooists, face painters, hair braiders and masseuses who operate outside a licensed establishment are currently unregulated. The Task Force has concluded that the Town should take action to protect the health and safety of Boardwalk visitors from inappropriate touching and dangerous chemicals, and wants to reduce congestion on the Boardwalk and competition and conflict between shop owners, henna tattoo artists and street vendors (which has sometimes become violent).

Accordingly, the Task Force proposes that the Town adopt an ordinance regarding Boardwalk regulation that contains the following explicit definitions:

Expressive material means newspapers, periodicals, books, pamphlets or other similar written material; it also includes cassette tapes, compact discs, digital video disks, paintings on paper or fabric, photographs, sculpture and prints that have been created or composed by the vendor. The sale of these items will be permitted on the Boardwalk at locations permitted under the terms of this ordinance. The sale of any other item will not be permitted on the Boardwalk. Expressive material shall not include the application of substances to others' skin, including but not limited to paints, dyes and inks.

Performers will be permitted to perform on the Boardwalk at locations permitted under the terms of this ordinance. The terms perform, performing and performance, as used in this ordinance, 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. Indicia of a "performance" or "performer" are seeking and/or accepting voluntary contributions through any means, including passing around a hat or leaving open an instrument case or other receptacle, soliciting, and/or accepting, directly or indirectly, donations after a performance, attempting to draw attention, convene an audience and/or engage onlookers as spectators or participants in a "performance."³ Individuals who dress in a costume, pose

³ The Task Force does not condone the aggressive solicitation of contributions by performers, expecting solicitation at all times to be "non-aggressive." The Task Force recommends that the Town Council take legislative action to forestall aggressive solicitation, such as the adoption of a definition of "performer" that recognizes that the aggressive solicitation of contributions is not an indicium of a "performer."

for photographs and solicit or accept gratuities will be deemed performers and are subject to the rules and regulations pertaining to performers. The terms perform, performing and performance shall not include:

1. The application of substances to others' skin, including but not limited to paints, dyes and inks; or
2. The provision of personal services that involve the touching of another, such as nail painting or hair weaving, braiding, cutting, or styling.

The proposed definitions borrow from the laws of other jurisdictions that have encountered issues similar to those faced by Ocean City. New York City, for example, bans the sidewalk sale of every item except for written materials (“newspapers, periodicals, books, pamphlets or other similar written material”) and paintings on canvas, photographs, sculpture and prints. *Mastrovincenzo, supra*, at 83 n.2, 104. After concluding that preventing congestion and providing for the safety of its citizens were legitimate government interests, the Second Circuit Court of Appeals concluded that even protected, expressive materials could be subject to reasonable time, place and manner regulation in order to further those goals.

Similarly, the Venice Beach ordinance allows the street sale of only expressive materials, including performances, but has defined street performances to exclude all personal services or drawing on the skin. The definition proposed here would not characterize as a “performer” a person who wants to sing, play an instrument, or engage in other performance-like activity not for remuneration or for purposes of attracting a crowd, but purely as a social activity.

B. Required Registration For Spaces In Which Expressive Activity Must Be Conducted In The Most Congested Areas On The Boardwalk

The Task Force recommends that, in congested areas on the Boardwalk, the Town require persons engaging in expressive activity to conduct this activity in designated

spaces for which they must register. Further, the Task Force recommends that the Town adopt rules and regulations regarding the assignment of the spaces and the activities that may be undertaken by persons conducting expressive activity.

1. Location And Configuration Of The Spaces

The Task Force recommends that, with the exception of S. Division Street, the Town establish the location and configuration of spaces between South 1st Street and Ninth Street where expressive activity can be conducted. The most congested area of the Boardwalk during the summer season is from South 1st Street to Ninth Street. This is the area where most street performers are located. The Town should continue the practice of permitting expressive activity only at the street ends, and thus, aside from S. Division Street, the spaces should be located at the street ends between South 1st Street and Ninth Street. On S. Division Street and after Ninth Street, the Town should require expressive activity be conducted at street ends, but need not establish spaces. The Task Force recognizes that S. Division Street contains a large street end plaza where performers who generate larger crowds frequently perform.

The configuration and nature of the Boardwalk at street ends varies greatly from South 1st Street to Ninth Street. No street end is precisely the same. For example, some street ends have concrete plazas on either the east or west sides of the Boardwalk (or both) while also containing a concrete tram pathway. Some street ends have facilities, such as restroom buildings or picnic tables. Further, north of Fourth Street, the Boardwalk narrows markedly, resulting in the tram running down the center of the Boardwalk. Accordingly, the number and size of spaces that can be safely and effectively accommodated varies at each street end. The Town should establish the spaces at locations where crowds that gather around performers or persons selling expressive material will not block access to the Boardwalk, store fronts, fire hydrants,

public benches, or the tram lane. Where possible, the number of spaces per street end should not exceed three, and the size of the spaces should be no greater than 100 square feet. The spaces should be clearly marked to identify their location and boundaries, but, in an effort to preserve the aesthetic qualities of the Boardwalk, these spaces should not be demarcated by the painting of lines on the Boardwalk. Instead, the Task Force recommends that the Town determine a more appropriate manner to define the spaces.

The Task Force has not conducted a specific analysis to identify the appropriate number and configuration of spaces on each street end. The Task Force, however, believes that establishing spaces in this fashion will provide ample opportunity for expressive activity conducted by performers mindful of the need to ensure the free flow of pedestrian traffic and access to stores and other facilities. The Task Force recommends that, prior to establishing spaces, the Town perform an analysis that determines the appropriate number and configuration of spaces on each street end. With respect to street ends, the Task Force recommends that, if the Town Council should decide to enact an ordinance which requires the establishment of spaces, at the time it enacts the ordinance the Council should adopt a resolution in which it identifies with specificity the location and configuration of spaces.

2. Assignment Of, And Registration For, The Spaces

Further, the Task Force recommends that the marked spaces between South 1st Street and Ninth Street be assigned twice a week at a location in City Hall or another City government office. The spaces should be assigned on a first come, first served basis pursuant to the procedure described below. A person seeking to have the space assigned to him or her for the following Monday through Thursday must register for the space on the preceding Monday by providing his or her name, and the names of all persons

participating in the expressive activity. A person seeking to have the space assigned to him or her for the following Friday through Sunday must register for the space on the preceding Friday in the same fashion.

Further, at the time a person seeks to register for a space, the Town official should provide the person with a registration form that states the rules and regulations for the use of the space. The Town should also require the person seeking to register to pay a nominal fee to be determined by the Town for the administration of the registration system. A person seeking to register should be required to describe on the form the nature and scope of the activity in which the person intends to engage in sufficient detail that the Town official responsible for assigning the space can determine that the person will be engaging in permitted expressive activity. The person seeking to register must sign the form and the form should state that the person registering for the space has reviewed the rules and regulations for the use of the space and agrees to comply with them. Furthermore, the Task Force recommends that upon registering for an assigned space, a performer must furnish proof of an insurance policy maintained by the individual(s) seeking to engage in expressive activity. The Task Force recommends that the Town determine the minimum amount of coverage for which the required insurance should provide. Finally, the Task Force recommends that this insurance policy contain a “hold harmless clause” with respect to the Town.

A person will be prohibited from registering for a space on the same street end during the same week. Thus, if the Town establishes spaces designated as A, B, and C at the end of Second Street, the person or persons who are registered for Space A on Second Street the Monday through Thursday of the first week of June cannot later register for a space at the end of Second Street from Friday through Sunday during the first week of June. Additionally, if a person registers for Space A on Second Street from Friday

through Sunday during the first week of June, that person or persons may not later register for a space at the end of Second Street from Monday through Thursday during the second week of June.

The Task Force carefully considered the testimony of many witnesses that spaces should be assigned at random by a lottery and that a rotation system should be implemented. The Task Force concluded, however, that street performers should be allowed to exercise some control over their location and that it would be unfair to assign a street performer at random to a location removed from the busiest areas of the Boardwalk when spaces are available in these areas. The Task Force believes a requirement that a performer not be located at the same street end on successive weeks should be sufficient to meet the goal of rotating performers.

3. Use Of The Spaces

The Task Force recommends that expressive activity be permitted in the spaces, subject to specific rules and regulations. The rules and regulations should be included in the City Ordinance, and the Task Force recommends that these rules include a prohibition on physically affixing props to the Boardwalk surface and a height limitation of four feet on props. In addition, a person utilizing a space should not be permitted to rope off or demarcate the spaces in any way. Persons may not leave equipment or props unattended in the space for more than 15 minutes. Further, the Town should only permit the spaces to be utilized at specified times. The Task Force recommends that the specified times be between 10:00 a.m. and 12:00 a.m. during the week, and between 10:00 a.m. and 1:00 a.m. on weekends. On any day of the week, however, the creation or amplification of music and amplification of sound of whatever nature should not be permitted after 11:00 p.m. The Task Force recognizes 11:00 p.m. as an appropriate time to cease the creation or amplification of music and amplification of sound because outdoor entertainment by

restaurants and businesses on the Boardwalk is not permitted after 11:00 p.m. Furthermore, the Task Force recognizes that law enforcement is authorized to curtail unreasonably loud noise pursuant to the Town's existing noise ordinance. Code of the Town of Ocean City, Maryland Sect. 30-271.

The Task Force heard testimony regarding pole dancing on the Boardwalk. Under certain circumstances, dancing can constitute expressive activity entitled to protection under the First Amendment. Dancing is not entitled to such a protection, particularly in a public place such as the Boardwalk, where it involves nudity, pornography or obscenity. Section 62-5 of the Ocean City Code currently prohibits nudity, pornography and obscenity on the Boardwalk. Accordingly, the Task Force believes that it must be left to law enforcement to determine whether the given conduct involves nudity, pornography, or obscenity.

The Task Force also heard testimony that crowds gathered around street performers obstruct traffic on the Boardwalk and access to stores and restaurants. The Task Force believes the spaces in the heavily traveled areas of the Boardwalk can be located and configured in such a way as to alleviate undue congestion. Nonetheless, the Task Force recognizes that law enforcement has authority to prevent the obstruction of a public way under the Maryland Code of Criminal Law § 10-201(c)(1), which provides that a person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place. *Id.*

4. Boardwalk Issues To Be Addressed By Requiring Registration For Spaces In The Most Congested Areas On The Boardwalk

The Task Force believes that the recommendations described above regarding the regulation of expressive activity on the Boardwalk will address a number of issues raised

by witnesses who testified before the Task Force. First, City police officials, particularly Lt. Pacini, noted that, in the most congested areas of the Boardwalk, street performers and individuals selling expressive material generate crowds which block (1) the flow of traffic on the Boardwalk, (2) the tram pathway, (3) access to retail stores and restaurants on the Boardwalk, (4) fire hydrants, and (5) public benches. This situation causes harm to the retail stores and restaurants and results in conflict between street performers and retail merchants and restaurant owners. The congestion also makes the Boardwalk experience less enjoyable for the public and creates safety issues when individuals or props are in the pathway of the tram and block fire hydrants. It could be suggested that police already have authority to disperse crowds where there is a dangerous situation, traffic is hindered or access to a store or restaurant is blocked. Police action in this situation, however, is not preferable. It causes disruption to the activities of the performers and merchants and makes the experience of members of the public less pleasant. Further, such action by the police increases the likelihood of a confrontation between a member of the public and the police that would otherwise be completely avoidable. By requiring the street performers and persons selling expressive material to conduct their activities within the designated spaces in the congested areas of the Boardwalk, the congestion problem can largely be ameliorated and a better situation can be created for street performers, merchants and members of the public seeking to enjoy the Boardwalk.

Additionally, the Task Force heard evidence that the current law authorizing expressive activity generally on the Boardwalk has resulted in retail store owners violating the spirit, if not the letter, of zoning laws by locating sales or service facilities on the Boardwalk itself in front of their stores. A requirement that expressive activity be conducted in designated spaces, which will not be located in front of retail stores, would

eliminate the problem of retail store owners expanding onto the surface area of the Boardwalk.

Furthermore, under existing law, police officers are required to make immediate judgments, many times in the midst of a crowd, as to whether sales or service activity is expressive activity protected by the First Amendment. Police officers often erred on the side of permitting the activity, thus undermining the Town's policy of not permitting non-expressive, commercial activity on the Boardwalk and exacerbating the general congestion and other problems caused by commercial activity on the Boardwalk. Further, uncertainty on the part of potential performers as to whether their activity constitutes protected expressive activity may deter the individuals from engaging in expressive activity. The Task Force's recommendation that persons be required to register for spaces in the congested areas and briefly describe the nature and scope of their activities would address these issues by having a Town official determine whether the proposed activity is permissible, with time for reflection (and, if necessary, an opportunity to consult the City Solicitor). Most importantly, this procedure would eliminate the need for police officers having to make this legal judgment in the midst of a large and busy crowd where there is the potential for miscommunication and conflict.

Another problem identified by testimony before the Task Force was that street performers sometimes occupy public benches, construct platforms that are affixed to the Boardwalk, utilize props that obstruct the view of the beach and ocean, and obstruct access to fire hydrants. The Task Force's recommendation that the Town establish spaces in the congested areas would prevent performers from occupying public benches and blocking fire hydrants. Outside of the congested areas, these issues can more easily be addressed on a case by case basis. Further, the Task Force recommends that the Town place height limitations on props that can be utilized by performers and prohibit

performers from affixing props to the Boardwalk itself. These restrictions should prevent performers from damaging the Boardwalk by affixing props and prevent them from blocking the view of the beach and ocean.

Additionally, the Task Force received evidence that the fumes from spray paint utilized by performers or persons selling expressive material can be annoying, uncomfortable and potentially unhealthy. The Task Force, however, decided not to recommend that spray painting be prohibited on the Boardwalk. The Task Force found that spray painting is central to activity that is expressive in nature and provides enjoyment to visitors to the Boardwalk. The Task Force believes that its recommendations on the establishment and use of spaces in the congested areas strikes the correct balance on this issue. By locating the spaces away from store fronts and restaurants, the Town would reduce the extent to which people will be exposed to the fumes. Further, by prohibiting performers and persons selling expressive material from registering for a space on the same street end in consecutive performance periods, the recommendation would eliminate the possibility that certain areas will be continuously exposed to the fumes for the entire season.

Furthermore, certain witnesses expressed concern that individuals dressing as costumed characters were able to conceal their identity and may interact in an inappropriate manner with children. The Task Force did not receive any evidence that such conduct had actually occurred, but finds that the likelihood that such an event might occur would be reduced if costumed characters were required to register for a space and identify themselves in the congested areas. This procedure would deter inappropriate conduct and would enable law enforcement authorities to quickly and effectively investigate complaints of misconduct by costumed characters. Outside of the congested

areas the potential for misconduct by costumed characters is less acute and can be more easily addressed on a case by case basis.

5. The Legal Validity Of The Task Force Recommendations

The Task Force has concluded that the recommendation that persons be required to conduct expressive activity in designated spaces in the congested areas, and be subject to delineated rules and regulations, would be consistent with the analysis of district court opinions governing the Town's Boardwalk and First Amendment principles. As explained in detail above, the government may impose reasonable "time, place, and manner" restrictions on speech provided that the restrictions "(1) are "justified without reference to the content of the regulated speech"; (2) are "narrowly tailored to serve a significant governmental interest"; and (3) "leave open ample alternative channels for communication of the information" that the speaker wishes to communicate. *Clark, supra*, at 293.

Further, the requirement that a restriction be "narrowly tailored to serve a significant governmental objective" means that the governmental goal would be achieved less effectively without the regulation. *Ward, supra*, at 798. The restriction need not be the least restrictive means available for achieving the objective, but it must not be substantially broader than necessary. *Id.* at 800. A restriction may be too broad if there are numerous and obvious less burdensome and more precise alternatives. *Id.* at 797. Whether there are "ample alternative channels for communication" is a very specific determination that will vary for each situation. The key question is whether the speaker's ability to communicate effectively and reach the intended audience is threatened by the government regulation. *Id.* at 802; *see also, Heffron, supra*, at 655.

In *Dowd*, the district court applied these rules to uphold a City of Los Angeles ordinance applicable to Venice Beach. *Dowd, supra*, at 22. The ordinance assigned performers to specific spaces on the boardwalk for the purpose of distributing limited space on the boardwalk and preventing congestion. *Id.* at 8. The city argued that the assignment of spaces provided a mechanism for police officers to resolve disputes over space and to allocate space in a neutral manner. *Id.* The assignment of spaces – the city contended – also expanded the pool of potential performers who might not assert themselves on a first come, first served basis or be willing to arrive at the crack of dawn to reserve a space. *Id.* at 8-9. The city also imposed a height restriction on the use of props to no more than four feet above the ground. *Id.* at 12-13. The district court found that, while the restrictions did have some tendency to limit speech or expressive activity, it was not substantially overbroad and was geared to addressing important governmental interests in the safe and pleasant use of the boardwalk. *Id.* at 13.

The Task Force believes that the district court's reasoning in *Dowd* is persuasive and applicable to the recommendations that it has made. Further, the Task Force believes that it is important that the Town has now had the benefit of three years of operating under the terms of the existing Ordinance as modified by the district court. This experience, as explained by testimony before the Task Force, has formed the basis for the limited and tailored new regulations that the Task Force recommends. In *Reynolds*, the Fourth Circuit considered a law that banned panhandling on highway medians imposed by a county ordinance. *Reynolds, supra*, at 1. The Fourth Circuit ruled that the County could not rely on common sense and logic alone to prove that such activity was dangerous and that a ban was necessary to address the conduct. *Id.* at 6. Rather, the County had to demonstrate that it had tried less restrictive methods, such as prosecuting individuals who actually obstructed traffic. *Id.* The Court remanded the case to the

district court to give the County an opportunity to gather and present such evidence. *Id.* at 8.

In the present case, the Town has had three years of experience with permitting expressive activity on street ends throughout the Boardwalk, except at the end of N. Division Street. This experience has brought to light certain specific issues created by such activity, but the Task Force believes that these issues can be addressed by the regulations it recommends with minimal impact on expressive activity. Indeed, as explained above, some of the recommendations should make it easier and safer to engage in expressive activity in the congested and busy environment of the Ocean City Boardwalk during the summer season.

C. Tables, Generators And Other Materials Used By Street Vendors And Performers

Many people have expressed concern that street performers sometimes appropriate what are meant to be public spaces and accommodations (*e.g.*, benches) and use them either to store their belongings or as part of their act. The Task Force believes that, by granting performers a designated space in the congested areas, this problem will be for the most part solved. It is expected that performers will confine themselves to the designated areas, which will exclude all public accommodations.

Within their designated spaces, performers may use tables, signs and other equipment that is not affixed to the Boardwalk as they deem necessary. The Town, however, wants to ensure the safety and aesthetic attractiveness of the Boardwalk. Many witnesses expressed concerns about generators on the Boardwalk for reasons having to do with both noise and safety. David Hartley, Ocean City's Fire Marshall, testified that generators pose potential safety risks because they produce exhaust and heat up,

potentially causing burns. In particular, he thought fueling and re-fueling generators on the Boardwalk was dangerous.

Because generators pose a fire hazard and are unsafe, noisy and produce exhaust fumes, the Task Force recommends that they be banned in the vending/performance spaces. In addition, the Town tries to maintain an aesthetic standard and to reduce blight and visual clutter by enforcing its zoning laws, which require merchants to limit their outdoor displays on the Boardwalk. The Town's interests in maintaining the attractiveness and visual appeal of the Boardwalk can best be accomplished by requiring street vendors to observe some of the same restrictions with which merchants must comply, especially when it comes to outdoor signs and displays. Accordingly, we recommend that street performers and vendors, like merchants, observe prohibitions on any display of more than four feet in height. Ocean City, MD Code of Ordinances, Sec. 110-884.

Restrictions on the types and size of equipment allowed in a public space that are content-neutral – that is, that are not aimed at repressing any particular speech because of its content – raise no constitutional concerns as long as they are reasonably related to furthering a legitimate government interest. Here, the interests advanced by the regulations are health and safety, and prevention of visual blight.

D. Closing Of Dorchester Street And Additional Streets To Performers And Street Vendors

The Task Force heard testimony from Lt. Ward Kovacs, a 33-year veteran of the Ocean City Beach Patrol who has been stationed at the Boardwalk for 30 of those years. Lt. Kovacs testified that the current system for getting onto the beach in case of emergencies presents a severe safety hazard.

Frequently, when Beach Patrol vehicles need to cross the Boardwalk, they have to wait for the crowds that are assembled to watch the street performers there make way for the vehicles, and have to wait for the performers or vendors (some of whom have elaborate booths, signs, stages or other equipment) to dismantle their set-up so that the Beach Patrol vehicles can pass. Sometimes, the hold-up can cause dangerous delays. Lt. Kovacs described various incidents that occurred last summer when the Beach Patrol tried to reach drowning victims and the crowds caused “life-threatening delays.” (February 9, 2015 Hearing Tr. at 41:16.) On one occasion, a street performer set up at the corner of Dorchester actually refused to move out of the way of the emergency vehicle, which carries on board a defibrillator – the only one available on the Beach. (*Id.* at 42.) The performer let the vehicle through only after Lt. Pacini, of the Ocean City Police Department, had been called and came to the scene. (*Id.* at 43.) On two other occasions, the delay in crossing the Boardwalk meant that one rescue officer struggled alone in the surf with a drowning victim until a second rescuer, stuck on the Boardwalk, could get there to help him. (*Id.* at 44.)

In order to avoid these life-threatening incidents, Lt. Kovacs requested, and this Task Force recommends, that Dorchester Street be closed off to street performers, thereby facilitating emergency access to the Beach.⁴

In order to ensure that emergency vehicles are able to access the Beach as quickly and efficiently as possible, the Task Force further recognizes the need for emergency

⁴Additionally, the Beach Patrol uses ATVs with low pressure tires for emergencies. (February 9, 2015 Hearing Tr. at 39.) The Patrol stores the majority of these vehicles on Dorchester Street. (*Id.*) The ATVs cannot lawfully reach N. Division Street by state highways like Baltimore Avenue, which provides an appropriate path under urgent circumstances. This problem is avoided by affording emergency vehicle access to the Boardwalk via Dorchester Street, a city thoroughfare not subject to the state highway proscription.

access at each “at grade” Boardwalk intersection. At each of these “at grade” locations, the streets meet the Boardwalk at a level intersection, thereby allowing emergency vehicles access to the Beach expeditiously and without having to travel to N. Division Street or Dorchester Street. Therefore, to facilitate the ease of emergency access, the Task Force recommends that, in addition to N. Division Street and Dorchester Street, performers be prohibited from conducting expressive activity at the ends of the following streets: South First Street, Worcester Street, Third Street, Fifth Street, Seventh Street, Surf Avenue, and Ninth Street. North of Ninth Street, the Task Force recommends that expressive activity by performers on every street end between and including 15th Street and 27th Street be prohibited in consideration of the reasons provided above.

E. Signs Disassociating The Town From Street Performers

The Task Force heard testimony that many tourists assume that the Town of Ocean City has vetted, endorsed and assumed responsibility for street performers. It has been suggested that this perception could lead people to trust the performers more and could, for example, make some people feel more at ease about their children engaging with costumed characters. Such a misperception could lead to a tourist being defrauded or injured by a street performer. In order to help forestall such problems, the Task Force recommends that the Town make use of the existing LED monitors along the Boardwalk, which should be used to deliver a message stating that the street performers are not employees of the Town, nor are they affiliated with the Town in any representative or official capacity. Additionally, the Task Force recommends that the Town deliver the same message through the media, by way of example, and not limitation, the local Ocean City public information (or “resort”) television channel, as well as the official “Ocean City, MD” website sponsored by the Town’s Department of Tourism.

F. Use Of The Amphitheater On Caroline Street

The Task Force recommends that the Town prohibit performers from utilizing the Caroline Street Amphitheater as a performance area.

G. Enforcement Procedures

The Town of Ocean City, Maryland is a municipal corporation organized under Article XI-E of the Maryland Constitution. As such, the legislative body of the Town may enact and adopt ordinances necessary to exercise the authority of the municipality. Md. Code, Local Gov't § 4-103(b)(3); § 5-203. These ordinances may provide that a violation of the Town's ordinances will be considered a civil offense or "municipal infraction." Md. Code, Local Gov't § 6-102. Lastly, a fine not to exceed \$1,000 may be imposed for each municipal infraction. *Id.*

As a municipal corporation, the Town has adopted a Charter containing the governing laws relating to the incorporation, organization, government, and affairs of the Town. The Charter may be found at Sect. C-101, *et seq.* of the Code of the Town of Ocean City, Maryland ("Ocean City Charter"). With respect to enforcement, the Charter recognizes that the Mayor and City Council of Ocean City may provide for the enforcement of this Charter and of any ordinance or regulation made thereunder. Ocean City Charter § C-416. In particular, the Charter provides that the Mayor and City Council are empowered to provide civil penalties for any violations of the Charter or related ordinance or regulation. *Id.*

Accordingly, under the Maryland Code for Local Government and the Ocean City Charter, the City Council of Ocean City may enact a civil enforcement statute that allows police officers to issue fines not to exceed \$1,000 for infractions of an ordinance regulating activity on the Boardwalk. Currently, Sec. 62-5 of the Code of Ordinances

("the Code") describes the prohibited acts on the Boardwalk, and includes an enforcement provision which states that any individual who violates Sec. 62-3, 62-4, and 62-5 of the Code shall be deemed to have committed a municipal infraction and shall be subject to the penalty provisions for such offenses found in Sect. 1-8(c) of the Code. The Task Force recommends that § 62-5 be amended to subject an individual to a fine of no less than \$25.00 and no more than \$1,000.00 if the person is found to have violated the provisions governing the Boardwalk which have been recommended by the Task Force.

Additionally, the Task Force recommends that a police officer have authority to evict a performer from a space for 24 hours if the police officer determines that the performer is utilizing the space in violation of the Town Code.

H. Reconvening Of Task Force

Finally, Task Force members believe that the process of sitting down together, identifying concerns and attempting to craft solutions that would be acceptable to all constituencies was a useful one. The Task Force recommends, therefore, that the City Council cause the Task Force to reconvene sometime during the summer when changes to Boardwalk regulation have been implemented and there has been time to see how those changes are working.

Greg Shockley, Chairman

EXHIBIT 1

OCEAN CITY, MARYLAND
RESOLUTION 2015-1

IN RE: Mayor and City Council of Ocean
City, Maryland Resolution 2015-1 entitled, "A
Resolution Establishing a Task Force to Study the
Issues Regarding Boardwalk Regulation."

HEARING

Thursday, February 5, 2015

1:00 p.m.

City Hall, Ocean City, Maryland

Reported by:

Alfred A. Betz, Court Reporter

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1 P R O C E E D I N G S
2
3 CHAIRMAN SHOCKLEY: All right. Being the
4 appointed time, let's get started. Good afternoon,
5 everybody. My name is Greg Shockley. I am the
6 Chairman of this Task Force. Before we begin I'd
7 like to thank and introduce all of the Task Force
8 members and say a little bit about why the Task
9 Force was convened and what we have been charged to
10 do.
11 We're here because on January 13, 2015,
12 the Mayor and City Council of Ocean City adopted
13 resolution 2015-1 entitled A Resolution Establishing
14 a Task Force to Study the Issues Regarding Boardwalk
15 Regulation. A copy of this resolution has been
16 included in the binder that we have received. In
17 forming this Task Force the Mayor and City Council
18 have appointed me as well as Mark Chase, Lee
19 Gerachis, Frank Knight and Bob Rothermel to serve.
20 I have an opening statement and I'll read it. I'm
21 not a very good reader but I need to stay on point,

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1 necessary to protect public health and safety while
2 others unnecessarily and impermissibly curtailed
3 first amendment rights to free expression. The
4 Court issued an Order enjoining enforcement of some
5 of the portions of the ordinance. Included, and
6 later in your binder there's a copy of this, the
7 Court Order issued by Judge Hollander labeled
8 Preliminary Injunction, another document labeled
9 Consent Decree, and a copy of the ordinance itself
10 which appears at Section 62 of the Code of the Town
11 of Ocean City.
12 Judge Hollander issued a Memorandum
13 Opinion explaining her reasoning and that, too, is
14 in the Task Force binder.
15 In essence, Judge Hollander upheld the
16 portion of the Town law that restricted street
17 performers and street vendors to certain parts of
18 the Boardwalk (the street ends, with the exception
19 of North Division Street, from which vendors and
20 performers were excluded completely). She struck
21 down the licensing and registration requirement,

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1 so I will read it. So bear with me as I go through
2 this opening statement.
3 As we know, the Boardwalk is a valuable
4 resource for the Town. It attracts thousands of
5 people to Ocean City every year and is crucial to
6 the image the Town wants to project and to the
7 economy both to the Town and many of the
8 individuals. In order to protect this resource the
9 Town found it necessary to regulate behavior on the
10 Boardwalk. At one time street performers and street
11 vendors were permitted to set up anywhere on the
12 Boardwalk. In 2011 the City Council adopted an
13 ordinance that required all street vendors and
14 performers to confine themselves to street ends,
15 required all street performers to register with the
16 Town, and banned all sales by street performers and
17 vendors.
18 This ordinance was challenged in federal
19 court. The lead plaintiff in this case was Mark
20 Chase who sits on our Task Force today. The Court
21 found some of the parts of the ordinance were

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1 however, also ordered that Ocean City could not
2 prohibit the sale of expressive materials by street
3 vendors and performers.
4 Although Judge Hollander's 2011 Order
5 defined expressive materials, enforcement of the law
6 has posed challenges. Specifically, police officers
7 charged with enforcing the law who have often had to
8 decide (and not known how to decide) whether any
9 given item sold on the Boardwalk was protected
10 expressive material.
11 Other issues have arisen as well with
12 respect to the enforcement of the law and the
13 Boardwalk regulation in general.
14 In 2013 the Town passed and tried to
15 enforce a Boardwalk noise ordinance. Judge
16 Hollander struck it down on first amendment grounds
17 also. Materials related to this case have also been
18 provided in your binder. The Mayor and City Council
19 have asked this Task Force to investigate
20 enforcement issues and after hearing from various
21 constituencies including street performers, street

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| <p style="text-align: right;">Page 6</p> <p>1 vendors and brick and mortar merchants, to issue a 2 report documenting our findings and recommending a 3 course of action including, if appropriate, issuing 4 proposed legislation.</p> <p>5 To that end, we have established the 6 following schedule: Today, February 5, 2015, we 7 will determine what issues we will consider and what 8 witnesses we want to hear from. On February 9, 9 2015, at 6:00 p.m. and again on February 18, 2015, 10 at 1:00 we will hear live testimony from witnesses 11 who have identified and asked to testify before the 12 Task Force. Members of the public are encouraged to 13 attend and testify at these hearings as well.</p> <p>14 In keeping with the practice of Town 15 Council meetings persons not specifically called to 16 testify by the Task Force will be allotted 3 to 17 5 minutes to provide remarks. This Task Force will 18 accept written submissions of any length; however, 19 they must be received on or before February 17, 20 2015.</p> <p>21 After the second public hearing I have</p> | <p style="text-align: right;">Page 8</p> <p>1 consider and some of the witnesses we should hear 2 from on these issues. If the Task Force members 3 wish to consider other witnesses and issues we will 4 add them to our list today. You will also see in 5 your binders a place for ordinances that apply to 6 other similar jurisdictions. It is empty now but I 7 will provide you materials for that tab and ask that 8 you let me know what other jurisdictions you would 9 like to hear about. I will be happy to get those 10 other ordinances for you. If you go to the tab 11 Issues, which is 9.</p> <p>12 One other thing I'd like to add is that 13 our proceedings are being recorded as always in this 14 chamber. We also have a Court Reporter taking down 15 what is said today as well. So we will have both 16 records available to us in the future.</p> <p>17 In my conversations with the Town, and 18 being a business owner along the Boardwalk, I came 19 up with a couple issues that are a good place to 20 start, I think, and they're listed. The first issue 21 is the effect of street performers and vendors on</p> |
| <p style="text-align: right;">Page 7</p> <p>1 described, on February 18th, the Task Force will 2 determine what finds and conclusions it wishes to 3 present to the Mayor and City Council. I will then 4 draft a report setting forth the Task Force findings 5 and conclusions and will send the draft report to 6 each Task Force member in advance of our final 7 meeting which will be held on March 25, 2015.</p> <p>8 At the final meeting the Task Force may 9 propose any additions or amendments to the draft 10 report. We will vote as necessary and the majority 11 view will determine what is in the Task Force 12 report. I will then issue a final report soon after 13 that last meeting taking into account all the 14 proposed amendments and additions. Any Task Force 15 member who disagrees with the final report can of 16 course submit a dissenting report.</p> <p>17 With that in mind, I ask the Task Force 18 members to turn to the page in their binders 19 entitled Issues/Witnesses. In consultation with 20 representatives of the Mayor and City Council I have 21 preliminarily identified some of the issues we can</p> | <p style="text-align: right;">Page 9</p> <p>1 traffic circulation and the use of the Boardwalk. 2 And the other issue I identified is additional 3 regulations on the Boardwalk behavior regarding 4 health, safety, noise and emergency access. So this 5 is our stepping off point for this. We all spend 6 time on the Boardwalk. We all make our livelihood 7 on the Boardwalk. And now is the time to get this 8 ball rolling. The first place that we've been 9 tasked to start is identifying the issues that we 10 need to look at, bring forward, discuss and find 11 solutions for. So I'll open it up to you guys or we 12 can discuss the first two that we've listed in the 13 packet. Feel free to jump in.</p> <p>14 MEMBER ROTHERMEL: Keep going. 15 CHAIRMAN SHOCKLEY: Well, let's just start 16 with the first one. The effect of street performers 17 and vendors on traffic circulation and the use of 18 the Boardwalk. I alluded to it in my opening 19 statement in that the Boardwalk is our, next to the 20 ocean, our predominant icon, or predominant 21 attraction to Ocean City.</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 There was a survey done a few years ago 2 that stated that 90 percent of the people who visit 3 Ocean City also visit the Boardwalk. So if you take 4 our current numbers, we suggest that there's 8 5 million visitors to Ocean City a year, that would 6 suggest that about 7.2 million people visit the 7 Boardwalk each year. 7.2 million people take an 8 impression of the Boardwalk home with them. And the 9 effect of the street performers, in my experience, 10 and guys feel free to jump in here, is that there's 11 always been street performers on the Boardwalk in 12 one sense or another. I mean, I remember as a child 13 there was a guy with a German shepherd who was blind 14 and played the banjo and walked up and down the 15 Boardwalk. The street performer population has 16 grown over the years, nationwide, I mean it's not 17 just Ocean City. We have seen a proliferation of 18 it. At this point, I mean, there are issues on the 19 Boardwalk now with traffic circulation and the use 20 of Boardwalk. 21 My guess is that we have a set of issues</p> | <p style="text-align: right;">Page 12</p> <p>1 MEMBER GERACHIS: I think Bob pretty much 2 hit it on the head. But we're not allowed to 3 regulate taste. Can we? I mean, we really can't do 4 that. So really what you're looking at is volume 5 and mobility. Those are your only two options. 6 Correct? 7 CHAIRMAN SHOCKLEY: They're among our 8 options, yes. I mean, clearly we could try to 9 regulate taste but we would not get very far. 10 MEMBER GERACHIS: Right. 11 CHAIRMAN SHOCKLEY: It has to be a common 12 sense, fair solution. That's what we're here to 13 discuss and identify the issues and move forward and 14 then listen to what -- 15 MEMBER GERACHIS: And I agree with the 16 volume. There are a lot of times where I ride my 17 bicycle and it's difficult to get around a lot of 18 places, you know, you get a cluster of performers. 19 So, I guess it's volume. 20 MEMBER ROTHERMEL: There is something with 21 with quality. You know, there have been numerous</p> |
| <p style="text-align: right;">Page 11</p> <p>1 and concerns, and I think on the performer side they 2 aren't happy as well. I think they have a set of 3 issues as well with what's going on up there as 4 well. So there's a problem and that's why we're 5 here. We're here to find a solution to this and 6 work forward. 7 MEMBER ROTHERMEL: What you're saying is, 8 and I remember, I think his name was Shorty, as 9 well, you know, what was once simple has now become 10 very complex because, you know, it becomes the 11 latest shocking thing to do, whether it's a guy on 12 stilts in costume or just a guy in costume. It's 13 like what's next? And it creates huge traffic 14 issues, you know, on what is essentially a 15 pedestrian thoroughfare. But it's also a commercial 16 thoroughfare for Boardwalk trains, you know, if we 17 need to get up there for emergency services. So 18 there's a whole host of issues that as it has 19 progressed and exploded it creates all kinds of 20 issues. 21 CHAIRMAN SHOCKLEY: All right.</p> | <p style="text-align: right;">Page 13</p> <p>1 individuals on that Boardwalk who attempt to play an 2 instrument or numerous instruments, and all of them 3 poorly and then -- 4 MEMBER GERACHIS: I agree with you. 5 MEMBER ROTHERMEL: -- what happens to that 6 customer that's sitting in that Boardwalk ocean 7 front hotel room or motel room or condominium that's 8 listening to that, you know, five nights a week? 9 There's something that diminishes the experience 10 that they will have in Ocean City. 11 MEMBER KNIGHT: But can you legislate 12 against a person's -- 13 MEMBER GERACHIS: That's the problem. 14 MEMBER KNIGHT: -- ability to perform? 15 MEMBER CHASE: Unfortunately, we can't 16 regulate that. That's pretty much picking and 17 choosing who has the right to speak based on whether 18 someone else thinks they're good enough. That comes 19 down to basically just our own opinions. The first 20 amendment is there to protect those who have no 21 voice rather than the majority who have, you know,</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 the biggest voice. Just like we wouldn't want to 2 see the pro life with their abortion signs up there, 3 and things like that, but they have just as much 4 right, even though you don't want to see it or hear 5 it unfortunately they have the right to do it. And 6 trying to take away their rights, that's where we 7 really start getting into first amendment issues. 8 I mean, that comes down to the pure 9 speech. Even though you're not good enough should 10 you be shut away in a closet because someone thinks 11 you're not good enough? 12 MEMBER ROTHERMEL: And I get that. But 13 what about the rights of people that come to enjoy 14 the ocean? 15 MEMBER CHASE: I fully agree. There's 16 some performers up there that just literally suck. 17 MEMBER GERACHIS: They find their ways to 18 8th Street, I'll tell you that. 19 CHAIRMAN SHOCKLEY: In my experience, and 20 I'm at one of the choke points on the Boardwalk, I 21 go from boards and train lane to just the Boardwalk.</p> | <p style="text-align: right;">Page 16</p> <p>1 them. If you can regulate that to basically the 2 east side of the Boardwalk that forces anyone 3 walking by right in front of the stores which is 4 going to increase revenue for the stores right there 5 because you're going to see them. 6 MEMBER GERACHIS: Actually I've kind of 7 heard the opposite of that. I've heard they walk 8 down and then they look away and they walk right by 9 stores and don't even notice what they're walking by 10 because they're so distracted on this side. So I 11 don't know if that argument applies, and actually 12 I've heard that from several store owners. 13 MEMBER CHASE: See, that comes down to 14 perception is after a certain amount of people are 15 in that crowd people walking by might glance over 16 but they can't see what's going on. What happens is 17 as a street performer we notice this a lot, it's 18 called tunnel vision. It don't matter if there's 19 nothing going on or if there's a lot going on, as 20 you're walking by something if something doesn't 21 catch your eye that pretty much is a reason not to</p> |
| <p style="text-align: right;">Page 15</p> <p>1 So, I mean, I understand the congestion and I mean 2 most nights I'll walk down the Boardwalk to see just 3 what's going on and the congestion is an issue. And 4 it varies artist to artist. And so, I mean, we're 5 all in agreement that, I mean, traffic circulation 6 on the Boardwalk is something that we need to spend 7 time and discuss. 8 MEMBER ROTHERMEL: Fine. 9 MEMBER CHASE: What about taking the 10 circle shows that are oftentimes complained about 11 being on the west side of the Boardwalk near stores. 12 We can easily regulate circle shows, large drawing 13 shows, to the west side. 14 MEMBER ROTHERMEL: Circle show? What's a 15 circle show? 16 MEMBER CHASE: A circle show it's a 17 performer who actually draws a large crowd. Then 18 you have what's called a trickle performer which is 19 typically like a musician maybe 4, 5 people will 20 stop to watch but a circle show is someone who has 21 30, 40, 50 people or more to actually stop and watch</p> | <p style="text-align: right;">Page 17</p> <p>1 look. This happens, because I've performed out in 2 Vegas, this happens a lot out there. It's just the 3 atmosphere that's created. 4 I've noticed that the store owners 5 themselves they have such an issue just displaying 6 things or getting customers to the stores because of 7 the variance of laws, so it's really, it almost 8 feels like we're blaming the street performers for 9 them looking over there when in all reality is a lot 10 of times some of the stores don't have a reason for 11 people to look over there. 12 When you're walking down the Boardwalk you 13 have 3 T-shirt stops per block, you have food shops, 14 two, three of them per block, all selling the same 15 thing block after block. It becomes desensitized to 16 the, you know, the tourist. I mean, if you've 17 walked the Boardwalk yourself you can see it. It's 18 like when you walk by one T-shirt shop the mentality 19 becomes I've seen it, I've already seen that, I've 20 seen the same and then you keep going. 4 or 21 5 blocks later you're still seeing the same stuff</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 out front.</p> <p>2 MEMBER ROTHERMEL: That may be the case</p> <p>3 but that's what we have. That's what a Boardwalk</p> <p>4 is.</p> <p>5 MEMBER CHASE: We don't have a choice.</p> <p>6 MEMBER ROTHERMEL: That's why you see</p> <p>7 everyone ratcheting it up to try and get someone's</p> <p>8 attention. And Lee is exactly right, decades ago</p> <p>9 when we did the first Beach Boy concert on the beach</p> <p>10 in '93 I heard that from the same people. I thought</p> <p>11 wow! We're bringing all these people into the area</p> <p>12 and the Boardwalk merchants said yeah but everyone</p> <p>13 is looking over there to see what you're doing and I</p> <p>14 can't grab their attention. That's a very valid</p> <p>15 point.</p> <p>16 MEMBER GERACHIS: Well, and it's one thing</p> <p>17 if it's an event or if it's a day-to-day thing. If</p> <p>18 you're in front of the same store every day and</p> <p>19 they're walking by, I see the frustration on their</p> <p>20 side, especially when they're kicking out a hundred</p> <p>21 thousand a year.</p> | <p style="text-align: right;">Page 20</p> <p>1 to meet so many people that you wouldn't otherwise</p> <p>2 meet. Just like in the stores, unfortunately it's</p> <p>3 kind of separate, I mean, I can understand a</p> <p>4 business store owner, he talks to a few people here</p> <p>5 or there. But as street performers, we talk to</p> <p>6 everyone. We get to know everyone. We get to know</p> <p>7 their needs, their wants, what they're looking for.</p> <p>8 MEMBER GERACHIS: I disagree with that. I</p> <p>9 mean, I have a store and I talk to a lot of people</p> <p>10 and I just think that, I think you guys are here for</p> <p>11 the money. I just think it's common sense. I don't</p> <p>12 think these guys will show up every year if they're</p> <p>13 not making money.</p> <p>14 MEMBER KNIGHT: As a street performer</p> <p>15 you're running a business. I mean, you have a set</p> <p>16 price set on what you are performing. You sell your</p> <p>17 wares for \$60 a copy, I believe.</p> <p>18 MEMBER CHASE: 50.</p> <p>19 MEMBER KNIGHT: You dropped back 10.</p> <p>20 MEMBER CHASE: Yeah.</p> <p>21 MEMBER KNIGHT: That seems to me like</p> |
| <p style="text-align: right;">Page 19</p> <p>1 MEMBER CHASE: That's like when Bill</p> <p>2 Hassay sued the City for the noise, the reason I</p> <p>3 helped him really wasn't for the street performers.</p> <p>4 We could get by with a little bit of noise. But I</p> <p>5 noticed that a lot of the stores rely on that music</p> <p>6 to help draw them in and that 30-foot rule</p> <p>7 eliminated any noise going from the stores. That's</p> <p>8 one reason why I helped Bill Hassay to overturn that</p> <p>9 and give some power back to justification for the</p> <p>10 police. If you notice, since then more people -- it</p> <p>11 depends on the music, I mean, you have to hear it.</p> <p>12 You have to know your audience in order to bring</p> <p>13 them in.</p> <p>14 Street performers, we put on a great show</p> <p>15 but we don't make very much money. Ocean City has a</p> <p>16 tendency not to tip us.</p> <p>17 MEMBER GERACHIS: Then why do you come</p> <p>18 back?</p> <p>19 MEMBER CHASE: The atmosphere. The fun.</p> <p>20 Getting to know people. Street performing is, it's</p> <p>21 not about money. It's a way of life. It's, you get</p> | <p style="text-align: right;">Page 21</p> <p>1 you're running a business out there as well.</p> <p>2 MEMBER CHASE: But see, I don't obligate</p> <p>3 them to tip me. I don't obligate them to buy.</p> <p>4 MEMBER KNIGHT: You obligate them to pay</p> <p>5 you \$50 --</p> <p>6 MEMBER CHASE: If they want my property.</p> <p>7 MEMBER KNIGHT: Right.</p> <p>8 MEMBER CHASE: Otherwise until that I'm</p> <p>9 purely performing. They're free to watch. They</p> <p>10 don't have to give me. Im entertaining them. My</p> <p>11 goal of being here is art has become one of those</p> <p>12 things that have been forgotten about even though it</p> <p>13 surrounds us, we kind of forget that everyone has</p> <p>14 the artistic ability. Since I've been here I've,</p> <p>15 thousands of people I've introduced into a new art</p> <p>16 form that's relatively new to the United States.</p> <p>17 That's my goal as an artist is more artists, better</p> <p>18 culture. But I don't obligate no one to actually</p> <p>19 buy anything. I've gone days without selling</p> <p>20 anything.</p> <p>21 MEMBER KNIGHT: That's a free choice.</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 MEMBER CHASE: Of course. It's a free 2 choice. My thing is, I mean, I do craft shows too 3 so I understand the business aspect of it, though. 4 And trying to get people, even though you have a 5 distraction you have to find a way to get them 6 beyond that distraction because you're always going 7 to have distractions. It's like blaming someone 8 feeding the birds. People are going to look at the 9 person feeding the bird instead of at the store. It 10 comes down to accountability. You can't always 11 blame someone else because they didn't look at you. 12 I mean, I fully understand where stores 13 are coming from. That's kind of why I said move the 14 circle shows away because if you force pedestrians 15 closer to stores they're more likely to look at you 16 than if they're forced into the tram lane and almost 17 hit by the train. 18 MEMBER KNIGHT: Aren't most of the circle 19 shows already on the east side? 20 MEMBER CHASE: Our lovely pole dancer was 21 on the east side.</p> | <p style="text-align: right;">Page 24</p> <p>1 the control of, you as the performer have control -- 2 MEMBER CHASE: And the crowd. 3 CHAIRMAN SHOCKLEY: And the crowd. And 4 then the ultimate arbitrator are the police. 5 MEMBER CHASE: Yes. 6 CHAIRMAN SHOCKLEY: Hopefully it doesn't 7 come to that because that's not what they're 8 supposed to be doing. 9 MEMBER CHASE: The police are stuck in the 10 middle. They got to do a job that really no one 11 wants to do and they got to try regulating something 12 that's very hard to regulate. It comes down to the 13 performer has to know how to control his crowd. 14 There's no excuse for a performer to block 15 three-quarters, 95 percent of the Boardwalk. That 16 comes down to poor crowd management by the 17 performer. As simple as that. There's no other 18 excuse. 19 MEMBER ROTHERMEL: I've been up there a 20 lot on the Boardwalk and I've never seen anyone try 21 to control their audience.</p> |
| <p style="text-align: right;">Page 23</p> <p>1 MEMBER KNIGHT: I know. She's back on the 2 street. You have magicians over there. 3 MEMBER CHASE: There was a few magicians 4 that do circle shows from 3rd Street and up because 5 once you get to 4th Street and up you can't be on 6 the street side. 7 MEMBER KNIGHT: Right. There's a sea 8 wall. 9 MEMBER CHASE: Right. But you had the 10 Gold Boys, Squeaky, the one on the tricycle. His 11 show, he just shuts down the Boardwalk, doesn't 12 matter day or night. That's because he doesn't 13 control it. So not only stick them over there but 14 we have to have a regulation not to block more than 15 50 percent of the Boardwalk. 16 CHAIRMAN SHOCKLEY: Okay. So I mean, 17 we're in agreement that the traffic is an issue. 18 MEMBER CHASE: Yes. Traffic is an issue 19 with some. 20 CHAIRMAN SHOCKLEY: And would you suggest 21 that whose -- both parties have responsibility in</p> | <p style="text-align: right;">Page 25</p> <p>1 MEMBER CHASE: Actually, I have a helper 2 who actually circles around, controls the tram lane 3 and then I perform in such a way that it creates me 4 down low so that 50 percent of the Boardwalk's not 5 blocked. 6 MEMBER GERACHIS: Do you pay your helpers? 7 MEMBER CHASE: He gets the tip buckets. I 8 mean, he volunteers his time. I train him on how to 9 paint. Pretty much I help him with food and things 10 like that. When I first met him he was homeless 11 down here. He had issues with drugs. He had issues 12 with everything. I tried to help him to get a 13 better way of life rather than continue along the 14 path that he was. 15 CHAIRMAN SHOCKLEY: Okay. So we're all in 16 agreement that traffic and crowd control is 17 something that we can talk about and work on a 18 solution. What about the uses? I mean, we're 19 guided by the Court and expression at this point. 20 But, I mean, are there uses that, I mean, obviously 21 there are uses that we don't want to see out there.</p> |

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1 I mean, we all can point to the pole dancer. And
 2 Bob alluded to it earlier, I believe, is what's
 3 next? I mean, what's the next thing that's going to
 4 come down the line that's going to shock, to shock
 5 all of us? So, I mean, do you guys want to do, do
 6 we need to talk and work on uses? I mean, obviously
 7 there's things that like art, artists, music, magic,
 8 I mean we're not going to as --
 9 MEMBER GERACHIS: But are we capable of
 10 talking about uses or is that mandated?
 11 CHAIRMAN SHOCKLEY: We can talk about
 12 uses, yes. But I'm warning you that there are uses
 13 that there's no need to even talking about. I mean,
 14 there are areas that we can go, and one that was
 15 brought up and obviously the pole dancer, I mean,
 16 we've heard discussion about Henna, probably hair
 17 wrap. There are uses out there of the Boardwalk
 18 that we can address and have conversation about and
 19 see if there's a way forward. I've mentioned two.
 20 Are there any other uses out there that you guys
 21 have issues with? Other than making, I mean, and

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1 the current way it operates is whoever is on the
 2 Boardwalk, whether it's Lieutenant Pacini or
 3 somebody under him, I mean, the arbiter of what this
 4 is is Guy and Heather and there are no guidelines
 5 and it's open to interpretation. So, I mean, are
 6 there uses that, whether you don't think belong out
 7 there or you guys --
 8 MEMBER GERACHIS: The one use I'm kind of
 9 confused on is just the costumes. And I know that's
 10 artistic but, you know, you get a kid that can't
 11 even speak English standing in a Bugs Bunny costume,
 12 and it's very creepy, you know, they just stand
 13 there. And they don't really do anything. There's
 14 no performance. They just stand there and collect
 15 tips.
 16 CHAIRMAN SHOCKLEY: Costumes are, I mean,
 17 that's someplace that we can discuss. I mean, I
 18 believe there are ways that we can address the
 19 costume issue.
 20 MEMBER ROTHERMEL: I agree, I mean, with
 21 the shows that we do, you know, if we wanted to have

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1 a costume character we would have to pay a license
 2 fee for that person to be there, and it just seems
 3 like going out and buying a costume at the Halloween
 4 store just doesn't seem -- it seems like there's
 5 some kind of copyright infringement that's being
 6 abridged there.
 7 MEMBER CHASE: The hard thing about
 8 costumes, though, is they have the right to wear it,
 9 it doesn't make it right but they do have the right
 10 to wear it. It comes down to whether the public
 11 gives them money. Because they could sit down a
 12 soda cup, by all means, it doesn't leave them tips,
 13 it doesn't leave them nothing but they have the
 14 right to wear the costume. Is it really their fault
 15 they got a dollar from the public because someone
 16 else gave it to them?
 17 MEMBER ROTHERMEL: But that's what they're
 18 there to do.
 19 MEMBER CHASE: Yeah, that's what they're
 20 there to do.
 21 MEMBER ROTHERMEL: So they're creating a

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1 commercial enterprise.
 2 MEMBER CHASE: It comes down to that very
 3 gray area. I know we tend to see only black or
 4 white but this is one of those really gray areas of
 5 they have the right to wear it but they don't have
 6 the right to infringe on someone else's artistic
 7 abilities or artistic expression. As an artist I
 8 see these people that create these copyrights over
 9 their lifetime someone else profiting off of them,
 10 that's wrong. But they still have the right to wear
 11 it. Just like if you went to a comic con people
 12 have the right to wear that costume. It's just a
 13 matter of when it comes down to collecting the money
 14 is what differentiates it.
 15 MEMBER ROTHERMEL: But the whole issue is
 16 the collection of money.
 17 MEMBER GERACHIS: They have to charge.
 18 MEMBER CHASE: But how can you regulate,
 19 unless the police sit there and stare at them and
 20 watch them they can't stop every costume character.
 21 They're not legally allowed to walk up to a costume

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| <p style="text-align: right;">Page 30</p> <p>1 or anyone wearing a head covering and ask them to 2 reveal their face. It's one of these very gray 3 areas. 4 CHAIRMAN SHOCKLEY: So that's one of the 5 areas that we can look at. I am certain other 6 jurisdictions have dealt with this issue before and 7 my guess is, I mean, you kind of spoke to it, you 8 take some consternation in it, too, I mean they're 9 taking money out of your pocket. 10 MEMBER CHASE: I ain't worried about the 11 money. It makes a mockery of what other real 12 artists are doing. A lot of performers we hate the 13 costumes. But when I sued the City I made sure 14 that, I mean, you can blame me for the costumes but 15 I made sure that I brought up the costumes because 16 people have the right to wear those. But they don't 17 have the right to infringe on, as you said, the 18 copyrights. It's a matter of whether the police are 19 able to enforce copyright laws, or if it just comes 20 down to the copyright owner. That's going to be a 21 hard thing.</p> | <p style="text-align: right;">Page 32</p> <p>1 across a legal issue, none of us being lawyers and 2 we will get the attorneys to provide us the answers 3 and they'll be available to you as soon as I can get 4 them. 5 MEMBER ROTHERMEL: Okay. 6 CHAIRMAN SHOCKLEY: So, I mean, and you 7 hear the argument about commercial enterprise and 8 then you, I mean, to take that a step farther you 9 hear the argument about the performance guys on one 10 side and then the businesses on the other side with 11 the taxation and the businesses and, I mean, and you 12 hear that argument continually that, I mean, they 13 have, they're regulated, the other side is not 14 regulated. So -- and that's -- 15 MEMBER CHASE: The stores, they have a lot 16 more power than they think. First amendment rights, 17 we got them, it's -- the stores have the same rights 18 if they want. I know you guys have taxes and fees 19 for displaying stuff. You have, just like when we 20 had the permits, it was -- we were paying to utilize 21 our basic constitutional rights. Stores have the</p> |
| <p style="text-align: right;">Page 31</p> <p>1 MEMBER ROTHERMEL: I think we need some 2 kind of instruction on what makes a commercial 3 enterprise, you know, once that money exchanges 4 whether or not it's for a fee certain like \$50 or if 5 it's just a tip, when does it become a commercial 6 enterprise? I've used this example before. There's 7 businesses downtown that would like to have outdoor 8 seating area for their restaurant, but they can't 9 exchange money outside on that right-of-way -- and 10 I'm not sure if it's a right-of-way or their 11 property or what. But they were told that they 12 can't exchange, if someone sits down to have a cup 13 of coffee they have to walk inside to make that 14 exchange of money or it's, I guess it's against the 15 zoning code. So when does the commercial exchange 16 happen? When does it become a commercial 17 enterprise? 18 CHAIRMAN SHOCKLEY: I'll tell you how 19 we'll handle any of the legal questions that come 20 up. I will ask Guy to provide it for us and we'll 21 have it at the next meeting. So anytime we stumble</p> | <p style="text-align: right;">Page 33</p> <p>1 right. If they're renting that property, it's 2 private property. They should really be allowed to 3 display what they want. 4 MEMBER ROTHERMEL: Tell that to the zoning 5 board. 6 MEMBER GERACHIS: You may think that but 7 we don't have that right. We have certain 8 regulations we have to go through and that's just 9 the way it's been. 10 MEMBER ROTHERMEL: The community has a 11 right to create zoning ordinances. 12 MEMBER GERACHIS: Why don't we make it 13 equal. I think you should have an outdoor display 14 requirement just like I do. You take up -- I don't 15 know how much square footage you take up, since 16 you're the one I'm looking at that does the street 17 performing, I will say I think you take up a pretty 18 solid chunk of the Boardwalk. When I ride my bike 19 down it's like a 12-by-12 square foot. 20 MEMBER CHASE: It's 8 feet by 13 feet. 21 MEMBER GERACHIS: Okay. Pretty close.</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 Pretty good square footage, probably more than the 2 guy with the name on rice who is spending how much a 3 month. I just think that, one, I don't understand, 4 and this is obviously a legal question, how you can 5 cordon off areas. I've never understood that. And 6 I'm not a lawyer, I don't get it. But it's one 7 thing to be sitting on a bench playing a guitar and 8 it's another to set up shop. And I don't understand 9 why the same regulations can't be applied like 10 outdoor display, you know, no motorized -- there are 11 guys down there with generators. Do you have a 12 generator? 13 MEMBER CHASE: Yes. 14 MEMBER GERACHIS: And, you know, fumes, 15 you know, if we're going to sit here and look at 16 your particular thing, the fumes, I don't understand 17 it. 18 MEMBER CHASE: The fumes with me, I mean, 19 just to go quickly -- 20 MEMBER GERACHIS: You wear a mask, 21 correct?</p> | <p style="text-align: right;">Page 36</p> <p>1 MEMBER CHASE: There's a clear 2 distinction. I've actually researched that myself. 3 There's a clear distinction between smoking in 4 public and painting and doing expressive activity in 5 public. Smoking is not a constitutional right. It 6 is a privilege. The Council has all the legalities 7 and all the legal rights to regulate that as they 8 wish. It's the same with drinking in public. It's 9 very similar to smoking in public and drinking in 10 public. It's the same concept to the courts. It's 11 just a privilege. It's not one of those rights 12 guaranteed by the Constitution. That's the clear 13 distinction on that one. 14 CHAIRMAN SHOCKLEY: That kind of takes us 15 to the second issue that we had spoken about earlier 16 and that's regulations on Boardwalk behavior 17 regarding health, safety, noise and emergency 18 access. Mark kind of explained that the Court has 19 said what it said about the spray fumes, but 20 obviously we have other recourse and, I mean, the 21 health department may have some say into it, EPA may</p> |
| <p style="text-align: right;">Page 35</p> <p>1 MEMBER CHASE: Yes. Once they get beyond 2 3 feet the way I paint is I have a 3-foot circle 3 around me that actually has dust, beyond that the 4 fumes are non harmful, they're nonlethal. 5 MEMBER GERACHIS: Non harmful but 6 invasive. I've heard people, I was up at a place 7 getting food and they can smell them. 8 MEMBER CHASE: It's no more invasive than 9 a car sitting in a parking lot with smoke coming out 10 of the tail pipe. 11 MEMBER GERACHIS: Except it's not on the 12 Boardwalk. 13 MEMBER CHASE: But either way it's no more 14 invasive than someone in front of you that, to be, 15 excuse my language, but farts while you're walking. 16 It's no more invasive than that. 17 MEMBER ROTHERMEL: The City Council has 18 determined that smoke is invasive and they're 19 getting rid of smoking or the vapors, cigarettes, 20 you know, I wonder how you draw the distinction 21 between the two.</p> | <p style="text-align: right;">Page 37</p> <p>1 have some say. Who knows? But that's clearly 2 something that we can look at going forward. I 3 mean, I'm not discrediting what you said, but -- 4 MEMBER CHASE: In 2011 the health 5 department actually addressed the Council and told 6 them that as long as I'm following the can 7 regulations outdoors that I'm in violation of no 8 laws whatsoever. So the Council has already been 9 addressed by the health department back in 2011. 10 CHAIRMAN SHOCKLEY: Okay. So, I mean, 11 that's obviously something we can continue to talk 12 about. Noise and emergency access, I know there's 13 been emergency access issues. I know that in, 14 originally the City has North Division Street. 15 There can be no performers in that area for access 16 for fire and police. I mean, that's another area we 17 can look at as well. I mean, just what other places 18 where emergency access may be required? 19 MEMBER CHASE: Lifeguards. 20 CHAIRMAN SHOCKLEY: Probably for the 21 lifeguards. So obviously we can look there. The</p> |

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1 noise, once again that's another area we can go to
2 and see how. I mean there has been a decrease in
3 noise. And I think the noise, as Lee said, I mean,
4 some of the guys are just bad and then it becomes
5 noise. And then some of the guys, I mean, they -- I
6 own a bar that has musicians and to a musician the
7 louder it is the better it is. I mean, it's just
8 something about a musician is they want it loud. I
9 believe there's some area we can work in there.
10 So we've covered these two preliminary
11 issues fairly well. Is there anything else that you
12 guys can think of to bring up or do you want to
13 address?
14 MEMBER KNIGHT: Before we leave this, up
15 in Section 1 it seems like one of the big things the
16 police have trouble with is defining expressive
17 materials. That was in your opening statement. I
18 think one of the things we should do is at least
19 come up with a definition of expressive materials to
20 give the police department a better handle on how to
21 handle what's going on out there on the Boardwalk.

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1 CHAIRMAN SHOCKLEY: I'll ask this to Mark.
2 Mark, you're basically the guy in this.
3 MEMBER CHASE: I know.
4 CHAIRMAN SHOCKLEY: And they've all said
5 it, obviously we aren't picking on you.
6 MEMBER CHASE: No. Don't worry. I know.
7 I hold no grudges.
8 CHAIRMAN SHOCKLEY: And you have the
9 expertise in this. And I, I mean there's a culture
10 to what you guys do, and is it -- I mean, is it a
11 self-enforcing culture or --
12 MEMBER CHASE: A lot of times, yeah. I
13 mean, we get to know the person right next to us, we
14 get to know each other just like store owners, you
15 guys get to know each other, you get to know what
16 store maybe works best next to another store. Just
17 like street performers, we get to know what acts
18 work best with other acts and we self-regulate
19 ourselves. It only comes down to, unfortunately,
20 when like the wrench is thrown in the system. Like
21 last year we had that henna wars which was actually

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1 started by a few T-shirt shops. They were placing
2 hennas out there, paying people to sit there to take
3 up spots to force performers not to be there. But
4 otherwise it's performers who get to know each
5 other, we get to talk to each other. A lot of us
6 we're just acquaintances.
7 CHAIRMAN SHOCKLEY: And Frank asked for a
8 definition of expressive materials. And I know
9 that's a tough one.
10 MEMBER CHASE: That's a very tough one.
11 CHAIRMAN SHOCKLEY: Say I'm bringing my
12 guitar into Town, how would be the best way for the
13 City to educate the street performers and the new
14 street performers? Because, I mean, like you said
15 there's a lot of gray area.
16 MEMBER CHASE: Yes.
17 CHAIRMAN SHOCKLEY: I think if you know
18 what you're getting into when you get into it you
19 may decide to walk down to another Town.
20 MEMBER CHASE: One of the main concerns
21 that I know the City had when I sued was they

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1 thought that the Boardwalk was going to be flooded
2 with people pretending it was their art and selling
3 it. I don't know how we can legally put it but
4 visual artists, it's a set thing that guitarists and
5 things like that are going to be singing but a
6 visual artist such as myself has to be able to
7 demonstrate what they're doing, otherwise we truly
8 don't know if it's their art or if they just printed
9 it off a computer or got it from someone else. It's
10 supposed to be one of the lively things out there.
11 I've seen a couple of visual artists which I really
12 don't like because they just sat there and sold
13 their computer-generated art. That's not what the
14 Boardwalk was meant. It's supposed to be a lively,
15 performers are there, they entertain.
16 CHAIRMAN SHOCKLEY: But how do you educate
17 the group that's here and then anybody who would
18 want to -- that's coming into Town to start --
19 MEMBER CHASE: It would have to be clearly
20 defined in the law. And I mean as what is
21 permissible, what's not permissible. Because we

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1 have the right to regulate time, manner, things like
2 that and not performing would be a way to, is one of
3 those manner questions. We would have to be able to
4 regulate saying that hey, you have to occasionally
5 be doing something instead of just sitting there.
6 So it's going to be coming down on how to word it so
7 it's not infringement but it holds up in a court of
8 law. That's going to be one of the hardest things.
9 CHAIRMAN SHOCKLEY: Definition of
10 expressive materials. Anything else?
11 MEMBER CHASE: Paint that's applied
12 directly to the skin. I have issues with that.
13 That falls under categories of body arts which is
14 actually regulated by the health department.
15 CHAIRMAN SHOCKLEY: Okay. So you got face
16 painting. Henna.
17 MEMBER CHASE: Henna. Any paint that is
18 directly applied to the skin. Because we have kids
19 out there, I have kids as a parent. We don't know
20 what's in those chemicals. If it's in a store
21 they're required by the health department laws to

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1 actually have a body art permit from the health
2 department. Performers, it's harder to regulate
3 that because they can choose what streets and the
4 health department would have an issue coming down.
5 I would just say ban it personally. That is a, it's
6 all legalities and the City would have all rights to
7 ban it based on that pure health if applied directly
8 to the skin.
9 Last year, they kept calling them henna
10 stands. They were actually using black hair dye and
11 applying it to the skin.
12 MEMBER KNIGHT: But didn't the health
13 department refuse to get involved in that? I think
14 they were requested to and they wouldn't.
15 MEMBER CHASE: The hard thing is the
16 health department would have to go to each
17 individual artist. It would have been out of their
18 scope of what they're able to theoretically
19 accomplish.
20 CHAIRMAN SHOCKLEY: That becomes an
21 enforcement issue whether they decide they want to

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1 enforce it or not, at least it's there and --
2 anything else? Think about what's next.
3 All right. Let me run through these
4 issues real quick. I mean, we won't be limited in
5 the scope of these issues but, I mean, this is going
6 to be the meat of our discussions, the meat of what
7 we hope to hear from the public as well and from our
8 witnesses that we'll get to shortly.
9 Issue number one, the effect of street
10 performers and vendors on traffic circulation and
11 the uses on the Boardwalk. And I think that pretty
12 much stood alone. We may be able to wrap some other
13 stuff it in but we'll just do those issues.
14 Questioning the additional regulations on the
15 Boardwalk behavior regarding health, safety, noise
16 and emergency access.
17 The next thing that we will ask, I'll ask
18 the attorneys for is a definition of expressive
19 materials that we can work with. And, I mean,
20 instead of having the guy court at 12 o'clock at
21 night whether it's expressive that there's some

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1 guidelines. Obviously, there will be things that at
2 times will step outside that, but the street
3 performers and the merchants on the Boardwalk will
4 understand what expressive materials are. Paint to
5 the skin, face painting and henna, discuss that as a
6 health department issue. And also Mark is
7 suggesting that it is not a protected expression by
8 virtue of what they're using.
9 MEMBER CHASE: Body art is a protected
10 thing but it is highly regulated by the health
11 department.
12 CHAIRMAN SHOCKLEY: Okay. So we can
13 explore our options there with the health department
14 and obviously their enforcement of what already
15 exists. They're the issues I have. Anything else
16 that strikes you or anything else that we need to
17 include in this?
18 MEMBER ROTHERMEL: I think it's a good
19 start.
20 CHAIRMAN SHOCKLEY: Okay. And I'm sure
21 we'll get some more as we move forward and listen to

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1 what people say. So that part is closed and you
2 have the books. The books will be updated with the
3 transcripts -- probably not the transcripts but the
4 additional issues. So you'll know where we're going
5 in the future, and the book will be current.

6 Proposed witnesses. The City undertook a
7 series of interviews late last year. They invited
8 people in, they asked for their opinions and I've
9 talked to people and here's kind of, here I think is
10 a fairly good cross-section of the community who is
11 affected by street performing. Obviously, I mean,
12 the street performers will be able to testify
13 themselves individually. I mean, it's not like I
14 can't find them. So I'm sure they all know this is
15 going on and they will be here and they will have
16 their opportunity to speak.

17 The list that I have come up with for the
18 people that I would like to hear, and it's up to
19 your guys approval as well, is Lieutenant Mark
20 Pacini. We all know who he is. Sharon Tippett who
21 is the owner of Mug & Mallet. She had, I mean she

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1 had the pole dancer in front of her last year and I
2 think she needs to be heard. Todd Ferrante, Park
3 Place Jewelers, long-time Boardwalk merchant. Vicki
4 Barrett, An Inn on the Ocean, and long-time
5 Boardwalk development member. Jackie Ball, Park
6 Place Hotel, which is what Bob was saying, she has
7 hotel guests there that may listen to the same
8 person or see the same thing 3 or 4 days while
9 they're there. Donny Timmons, Dumser's, I think he
10 has five locations on the Boardwalk, most of them
11 down on the south end where the congestion and the
12 traffic flow problems are probably the worst, and
13 probably, I mean, judging by the amount of ice cream
14 he sells it's either him or Thrashers who have the
15 traffic congestion. Yadigar Karsli is the owner of
16 Love's Lemonade and is a former street performer who
17 now is a business owner. Glenn Irwin is the
18 Director of OCDC. OCDC spent the past 15 years
19 downtown trying to improve it, and Glenn's on the
20 ground every day down there. Hale Harrison, I
21 believe 8,000-plus hotel rooms in the Town of Ocean

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1 City, several on the Boardwalk. And then Joe
2 Kro-Art, Ocean Gallery, and Joe's been out there
3 forever selling art.

4 So that's our list to start with.

5 Obviously, there will be varying amount of times
6 that are given to people. We've said 3 to 5 minutes
7 and we will stick to that with very few exceptions.
8 I think Lieutenant Pacini will be granted a large
9 portion of time because he's spent the most time out
10 there dealing with it on both sides of the issue.
11 So Mark will get a fair chunk of time to explain the
12 situation to us.

13 Anybody else you guys like to see called
14 and given time?

15 MEMBER ROTHERMEL: That's a cross-section.
16 CHAIRMAN SHOCKLEY: And then Mark, like I
17 say, the street performers, I mean, they know.

18 MEMBER CHASE: Yeah. Most of them are in
19 Florida. I doubt they're going to be here.

20 MEMBER KNIGHT: We need to hear from a
21 couple of street performers.

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1 CHAIRMAN SHOCKLEY: I think that's
2 important.

3 MEMBER CHASE: I know we have at least one
4 here. There's another gentleman -- right there.

5 CHAIRMAN SHOCKLEY: Okay. Guys, make sure
6 you come and talk. I mean, we're here for you guys,
7 too. This is not, I mean, we're looking for a
8 solution that helps everybody.

9 MEMBER ROTHERMEL: Greg, it doesn't look
10 like there's a T-shirt shop involved in here.

11 CHAIRMAN SHOCKLEY: No. There's not. So
12 I mean, maybe we can --

13 TRICIA OERTEL: What about the lady who
14 handles all the foreign students that come into
15 Town?

16 CHAIRMAN SHOCKLEY: Okay. Kerri Lynch, I
17 believe. Okay. Kerri. Somebody who handles
18 foreign students and their visas.

19 TRICIA OERTEL: Because then their
20 visas --

21 CHAIRMAN SHOCKLEY: My understanding of

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1 most of those visas the J1 Visa in particular that
 2 that's probably, they can't work that way.
 3 TRICIA OERTEL: Right.
 4 CHAIRMAN SHOCKLEY: All right. I'll get
 5 up with Kerri. And do you have a T-shirt guy?
 6 MEMBER GERACHIS: Bruce.
 7 CHAIRMAN SHOCKLEY: Bruce? Okay. I'll
 8 talk to Bruce or if Bruce isn't in Town we'll find
 9 another one. So I know -- anything else on that? I
 10 think, I mean, I think it's representative. And
 11 like I said, I mean, to you guys out there that know
 12 street performers get in here and have your say.
 13 And I'll encourage the business people, too. And
 14 I've heard this excuse for years and years, we're so
 15 busy in the summer we don't have anything to do so
 16 in the winter we all go on vacation and things get
 17 done in the winter. And the complaint is I wasn't
 18 here. We're here, but, I mean, encourage the other
 19 business people to come in and have their say. It's
 20 very important. If this is going to be successful
 21 everybody needs to have their say.

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1 We will get you an updated list of
 2 witnesses that we will call. Obviously, the night
 3 of the event we'll have a sign-in sheet and we'll
 4 work off of that to get the people up here.
 5 The other piece of information that we
 6 have is we have ordinances and variances from around
 7 the country and how they have dealt with street
 8 performers and how, I mean, whether they've gotten
 9 rid of it, whether they've come to some common
 10 ground and have the street performers there.
 11 So would you guys like to see that?
 12 Anything in particular that you'd like to see?
 13 MEMBER KNIGHT: Are there any documents or
 14 anything about how street performers might regulate
 15 themselves in any jurisdictions?
 16 MEMBER CHASE: I haven't seen anything.
 17 CHAIRMAN SHOCKLEY: That's something we
 18 can ask.
 19 MEMBER KNIGHT: You guys don't get
 20 together, determine who's good, who's bad or --
 21 MEMBER CHASE: We always have that bad

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1 apple. There's certain ones out there no one gets
 2 along, just like in any community you always have
 3 that one bad apple. But overall I haven't seen any
 4 actual case law that upheld the right or even dealt
 5 with it.
 6 CHAIRMAN SHOCKLEY: Like somebody said,
 7 you can't legislate taste. So good progress today.
 8 We need to have a couple votes here to finish up
 9 what we have today. Does anybody have anything else
 10 to say or add?
 11 MEMBER CHASE: I guess for their research
 12 if they want there's a web site called busker
 13 advocates.org. They have a lot of case law that
 14 deals with street performing if you guys just want
 15 to look at it, at least that way you can see all the
 16 different lawsuits. They have all the different
 17 lawsuit names, everything that you basically need to
 18 understand what is admissible and what's --
 19 MEMBER ROTHERMEL: Buskirk advocate?
 20 MEMBER CHASE: Busker advocates with an
 21 A.org. B-U-S-K-E-R.

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1 MEMBER ROTHERMEL: You said this is going
 2 to be updated, this binder?
 3 CHAIRMAN SHOCKLEY: Yes.
 4 MEMBER ROTHERMEL: Can we take this with
 5 us?
 6 CHAIRMAN SHOCKLEY: Yes. We will have, I
 7 mean before the next meeting hopefully we'll have
 8 your materials and you can just add to it.
 9 MEMBER ROTHERMEL: Okay.
 10 CHAIRMAN SHOCKLEY: Please take the
 11 binder with you. We went over the issues. Do we
 12 have a motion and a vote to continue with those
 13 issues?
 14 MEMBER KNIGHT: So moved.
 15 MEMBER ROTHERMEL: Second.
 16 CHAIRMAN SHOCKLEY: All in favor? All
 17 right. Then I need a vote on the proposed
 18 witnesses, with the two that we --
 19 MEMBER ROTHERMEL: The additions.
 20 MEMBER KNIGHT: Motion to accept the
 21 proposed witnesses with the two additions.

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1 MEMBER GERACHIS: Agreed. ,
 2 CHAIRMAN SHOCKLEY: All right. Good.
 3 Okay.
 4 Anybody want to add anything for the good
 5 of the cause?
 6 MEMBER CHASE: Actually there was one
 7 other thing I actually thought about. If we allowed
 8 store owners, like the Mug & Mallet, or even
 9 Shenanigans to actually hire like a performer to
 10 stand in front of their store, I forget which one it
 11 was whether it was Mug & Mallet or whether it was
 12 Shenanigans that used to have a steel drum player
 13 that sat directly in front of their gate.
 14 CHAIRMAN SHOCKLEY: I didn't hire him. I
 15 liked him. I thought he did a great job and I
 16 tipped him but I didn't --
 17 MEMBER CHASE: But allowing it like as a
 18 store owner, if you'd like a performer to do that
 19 and encourage them without being yelled at,
 20 basically, would we be able to add some kind of like
 21 stipulation in there for store owners to be able to

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1 CERTIFICATE OF REPORTER
 2
 3
 4
 5 I hereby certify that the foregoing is a
 6 true and accurate transcript of the proceedings in
 7 the aforementioned matter.
 8
 9
 10
 11
 12 _____
 13 Alfred A. Betz, Court Reporter
 14
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1 do that?
 2 CHAIRMAN SHOCKLEY: We can talk about it.
 3 I doubt it very seriously because, number one, you
 4 run into zoning; number 2, you'd run into liquor
 5 license regulations. Because the City regulates
 6 entertainment to some extent but your liquor license
 7 regulates your entertainment to a great deal to the
 8 point where the number of pieces that are available.
 9 So something we can look into it but I don't
 10 think --
 11 MEMBER CHASE: I want to give you guys
 12 some --
 13 CHAIRMAN SHOCKLEY: Um-hmm. Do we have a
 14 motion to adjourn? Second? Okay. Thank you, guys.
 15 We'll see you Monday night at 6 o'clock. Thank you,
 16 everybody.
 17 (Proceedings concluded -- 1:55 p.m.)
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| <p>A.org (1) 52:21 abilities (1) 29:7 ability (2) 13:14 21:14 able (8) 30:19 41:6 42:3 43:18 44:12 46:12 54:20,21 abortion (1) 14:2 abridged (1) 28:6 accept (2) 6:18 53:20 access (7) 9:4 36:18 37:12,13 37:15,18 44:16 accomplish (1) 43:19 account (1) 7:13 accountability (1) 22:10 accurate (1) 56:6 acquaintances (1) 40:6 action (1) 6:3 activity (1) 36:4 acts (2) 39:17,18 actual (1) 52:4 add (6) 8:4,12 52:10 53:8 54:4 54:20 additional (3) 9:2 44:14 46:4 additions (4) 7:9 7:14 53:19,21 address (3) 26:18 27:18 38:13 addressed (2) 37:5 37:9 adjourn (1) 55:14 admissible (1) 52:18 adopted (2) 2:12 3:12 advance (1) 7:6 advocate (1) 52:19</p> | <p>advocates (1) 52:20 advocates.org (1) 52:13 mentioned ... 56:7 afternoon (1) 2:4 ago (2) 10:1 18:8 agree (4) 12:15 13:4 14:15 27:20 Agreed (1) 54:1 agreement (3) 15:5 23:17 25:16 ain't (1) 30:10 Alfred (2) 1:21 56:12 allotted (1) 6:16 allowed (4) 12:2 29:21 33:2 54:7 allowing (1) 54:17 alluded (2) 9:18 26:2 amendment (5) 4:3 5:16 13:20 14:7 32:16 amendments (2) 7:9,14 amount (3) 16:14 47:13 48:5 answers (1) 32:2 anybody (4) 41:17 48:13 52:9 54:4 anytime (1) 31:21 appears (1) 4:10 apple (2) 52:1,3 applied (4) 34:9 42:11,18 43:7 applies (1) 16:11 apply (1) 8:5 applying (1) 43:11 appointed (2) 2:4 2:18 appropriate (1) 6:3 approval (1) 46:19</p> | <p>arbiter (1) 27:3 arbitrator (1) 24:4 area (8) 18:11 29:3 31:8 37:15 37:16 38:1,9 40:15 areas (5) 26:14 29:4 30:3,5 34:5 argument (4) 16:11 32:7,9,12 arisen (1) 5:11 art (9) 21:11,15 26:7 41:2,8,13 43:1 45:9 48:3 artist (6) 15:4,4 21:17 29:7 41:6 43:17 artistic (4) 21:14 27:10 29:6,7 artists (5) 21:17 26:7 30:12 41:4 41:11 arts (1) 42:13 asked (4) 5:19 6:11 40:7 46:8 aspect (1) 22:3 atmosphere (2) 17:3 19:19 attempt (1) 13:1 attend (1) 6:13 attention (2) 18:8 18:14 attorneys (2) 32:2 44:18 attraction (1) 9:21 attracts (1) 3:4 audience (2) 19:12 24:21 available (3) 8:16 32:3 55:8</p> | <p>20:19 23:1 37:9 bad (4) 38:4 51:20 51:21 52:3 ball (2) 9:8 47:5 ban (2) 43:5,7 banjo (1) 10:14 banned (1) 3:16 bar (1) 38:6 Barrett (1) 47:4 based (2) 13:17 43:7 basic (1) 32:21 basically (5) 13:19 16:1 39:2 52:17 54:20 beach (2) 18:9,9 bear (1) 3:1 behavior (4) 3:9 9:3 36:16 44:15 believe (6) 20:17 26:2 27:18 38:9 47:21 49:17 belong (1) 27:6 bench (1) 34:7 best (3) 39:16,18 40:12 better (4) 21:17 25:13 38:7,20 Betz (2) 1:21 56:12 beyond (3) 22:6 35:1,3 bicycle (1) 12:17 big (1) 38:15 biggest (1) 14:1 bike (1) 33:18 Bill (2) 19:1,8 binder (6) 2:16 4:6 4:14 5:18 53:2 53:11 binders (2) 7:18 8:5 bird (1) 22:9 birds (1) 22:8 bit (2) 2:8 19:4</p> | <p>black (2) 29:3 43:10 blame (2) 22:11 30:14 blaming (2) 17:8 22:7 blind (1) 10:13 block (6) 17:13,14 17:15,15 23:14 24:14 blocked (1) 25:5 blocks (1) 17:21 board (1) 33:5 boards (1) 14:21 Boardwalk (55) 1:8 2:14 3:3,10 3:12 4:18 5:9,13 5:15 8:18 9:1,3,6 9:7,18,19 10:3,7 10:8,11,15,19,20 11:16 13:1,6 14:20,21 15:2,6 15:11 16:2 17:12 17:17 18:3,12 23:11,15 24:15 24:20 26:17 27:2 33:18 35:12 36:16 38:21 41:1 41:14 44:11,15 45:3 47:3,5,10 48:1 Boardwalk's (1) 25:4 Bob (4) 2:19 12:1 26:2 47:6 body (3) 42:13 43:1 45:9 book (1) 46:5 books (2) 46:2,2 Boy (1) 18:9 Boys (1) 23:10 brick (1) 6:1 bring (3) 9:10 19:12 38:12 bringing (2) 18:11</p> |
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OCEAN CITY, MARYLAND

RESOLUTION 2015-1

In re: Mayor and City Council of Ocean City, Maryland Resolution 2015-1 entitled, "A Resolution Establishing a Task Force to Study the Issues Regarding Boardwalk Regulation."

HEARING

Monday, February 9, 2015

6:00 p.m.

City Hall, Ocean City, Maryland

Reported by:

Alfred A. Betz, Court Reporter

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| <p style="text-align: right;">Page 2</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 CHAIRPERSON SHOCKLEY: Welcome, everybody.</p> <p>4 My name is Greg Shockley. I'm Chairman of the</p> <p>5 Boardwalk Entertainment Task Force. Mark Chase,</p> <p>6 Frank Knight, Bob Rothermel, Lee Gerachis form the</p> <p>7 rest of this Task Force. Tonight will be our first</p> <p>8 night for testimony and you guys will get a chance</p> <p>9 to speak along with the witnesses we've selected to</p> <p>10 speak as well.</p> <p>11 A reminder that the proceedings tonight</p> <p>12 are being recorded as video and audio by the City.</p> <p>13 I also understand that tonight's meeting is being</p> <p>14 streamed. And what also goes on is being</p> <p>15 transcribed by Al Betz as well. So we're fully</p> <p>16 recorded this evening, so everybody will have a</p> <p>17 record and we can go back to it as we need it.</p> <p>18 Some housekeeping that I need to take care</p> <p>19 of with task forms members is that we have updated</p> <p>20 the binders, we updated the table of contents and</p> <p>21 added tabs 10 and 11. They're for written</p> | <p style="text-align: right;">Page 4</p> <p>1 Ayres who serves as City Solicitor. Guy is</p> <p>2 supported in that role by his law firm including</p> <p>3 Heather Stansbury. The Town has asked the law firm</p> <p>4 of Venable, LLP including Carey Deeley and Maria</p> <p>5 Rodriguez who attended our first session to</p> <p>6 represent it specifically in the matters relating to</p> <p>7 the Task Force. When the Task Force asks for legal</p> <p>8 information, it is asking the Town so I referred</p> <p>9 your questions to the Town's lawyers.</p> <p>10 I appreciate the Town asking the lawyers</p> <p>11 to provide us with the information that I'm about to</p> <p>12 give you. For clarity, the lawyers are here to</p> <p>13 represent the Town only. These lawyers and their</p> <p>14 firms are not serving as counsel for the Task Force</p> <p>15 members nor to the Task Force generally. Any</p> <p>16 participants in this process should feel free to</p> <p>17 seek legal advice of counsel of their choosing and</p> <p>18 if appropriate share information relevant to these</p> <p>19 proceedings during the meetings or by written</p> <p>20 submission from their counsel.</p> <p>21 Now I'd like to read the handout that the</p> |
| <p style="text-align: right;">Page 3</p> <p>1 submissions. And at our last meeting we asked, we</p> <p>2 had a couple of legal questions that were answered.</p> <p>3 They're included in that as well. They also</p> <p>4 provided materials for tab 8 which is a</p> <p>5 cross-section of ordinances from around the country</p> <p>6 concerning our entertainers. We also updated tab 9</p> <p>7 which is a list of our witnesses. And then</p> <p>8 obviously tab 10 is for the written submissions that</p> <p>9 we are getting via letter and e-mail. So anybody</p> <p>10 who can't be here can do it through e-mail or letter</p> <p>11 so we get a full record and everybody has a chance</p> <p>12 to participate in this proceeding.</p> <p>13 So with that being said, another read</p> <p>14 statement: At the close of our first meeting, based</p> <p>15 on the issues that this Task Force raised, I asked</p> <p>16 the Town of Ocean City to look into and summarize</p> <p>17 the law on a couple of points. Before I share what</p> <p>18 the lawyers have provided me I want to take a moment</p> <p>19 to introduce them and explain the role that they are</p> <p>20 playing in these proceedings.</p> <p>21 The Town is generally represented by Guy</p> | <p style="text-align: right;">Page 5</p> <p>1 Venable attorneys prepared at the Town's direction</p> <p>2 for sharing with the Task Force in response to your</p> <p>3 questions. Specifically, we've had a couple of</p> <p>4 questions about business enterprise and permitted</p> <p>5 uses. Instead of reading it, I would encourage you</p> <p>6 guys to take your time and read it after tonight's</p> <p>7 meeting, and if you have any questions bring them up</p> <p>8 at the next meeting and then we'll be able to</p> <p>9 address your concerns about that as well. But they</p> <p>10 were questions that were brought to us by Task Force</p> <p>11 members. So I don't feel it necessary to read the</p> <p>12 whole thing. Just let us digest it and we'll pass</p> <p>13 on what we get out of it from you.</p> <p>14 Tonight's meeting is basically yours. We</p> <p>15 have selected several people from around Town that</p> <p>16 are involved in both sides of this issue to speak</p> <p>17 tonight. They will be awarded as much time as they</p> <p>18 need. And as we work through our, the witness list,</p> <p>19 or the speaker list, let's say, because they really</p> <p>20 aren't witnesses, we'll open it up to the public.</p> <p>21 There's been a sign-in sheet. So we'll work the</p> |

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| <p style="text-align: right;">Page 6</p> <p>1 sign-in sheet in order that we received it. It's on 2 that table right there. So feel free to sign in. 3 Those signing in, 3 to 5 minutes, and I 4 warn you that the scope of this Task Force is very 5 narrow so we will be discussing Boardwalk 6 entertainment and ways to move forward with 7 Boardwalk entertainment and how it can be regulated 8 and how we can make the situation better for all 9 involved. That's all we're going to speak to. So 10 if you get off topic I will try to rein you back in 11 and if you continue to stay off topic we'll ask you 12 to stop speaking, please. 13 So just a reminder, it's a very narrow 14 scope and please keep your comments to the Boardwalk 15 entertainment issue. 16 To start with tonight, the first person to 17 speak and make a presentation is Lieutenant Pacini. 18 LIEUTENANT PACINI: Good evening, I just 19 want to go and introduce myself and give you a 20 little background about me and my work here in Ocean 21 City.</p> | <p style="text-align: right;">Page 8</p> <p>1 I come before you today to discuss ways 2 that we can make our Boardwalk safer. I would like 3 all of you to know and everybody in the room also I 4 believe our Boardwalk is exceptionally safe, but of 5 course there's always room for improvement. Most 6 important is that we make everyone's Boardwalk 7 experience a safe one. 8 Also a great concern of mine is our 24-7 9 social media trending news environment. It is very 10 important that we are acutely aware of how we are 11 perceived. 12 The duty of the Task Force is to assure 13 our tourist destination resort Town is safe. But we 14 also must be keenly aware of our public perception. 15 Crime is an issue that we can tackle. But we cannot 16 forget that the fear of crime which unfortunately 17 has landed our Boardwalk on the front pages of our 18 newspapers. 19 During November of 2014 I was fortunate 20 enough to meet the attorneys from the Venable law 21 firm, the legal team assisting the Task Force.</p> |
| <p style="text-align: right;">Page 7</p> <p>1 My name is Mark Pacini. It's a pleasure 2 to come before you as we join our efforts to make 3 our Town safer. I'm a Lieutenant with our police 4 department and I have about 25 years of experience 5 policing Ocean City. The majority of my summer 6 deployment assignments have been in the southern 7 district area of our Town which, as you know, 8 includes our Boardwalk. 9 Beginning in 1989, my experience on the 10 Boardwalk includes patrolling by foot and bicycle. 11 Additionally, I have worked as a plain clothes 12 covert, semi-covert operator with the narcotics and 13 clothes operations. Since 1990 I've been 14 responsible for a squad of officers as a first line 15 supervisor and eventually I was assigned to the 16 southern district as the evening shift watch 17 commander responsible for OCP's largest patrol shift 18 during the summer configurations. The majority of 19 my work has occurred during the evening hours which 20 encompasses 5:30 in the evening until 3:00 the next 21 morning.</p> | <p style="text-align: right;">Page 9</p> <p>1 Prior to that meeting they requested that I answer a 2 series of questions that would give all involved a 3 better feel for the concerns of our community. I've 4 included those questions here and my answers also, 5 and I've also provided attachments for you including 6 photographs to assist you with clarification. I've 7 also alphabetized my answers for the ease of 8 reference during my testimony. 9 You should be aware that I have a large 10 amount of information that can assist you in making 11 recommendations. The quantity of material that I've 12 collected in the last 3 years is far too voluminous 13 to present here today but I would be glad to present 14 each of you if you would like to meet. 15 I would like each of you to know that I 16 serve the community as a Lieutenant in the police 17 department. As a member of a paramilitary 18 organization it is my custom to adhere to a strict 19 chain of command. I believe it is important that I 20 lay it all out on the table here for you guys today. 21 It is my belief that without transparency we</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 couldn't succeed. 2 We have a narrow window of time and 3 opportunity to get this right. I want us to do so. 4 As my fellow officers, particularly the ones that 5 patrol in the area we call the southern district, 6 have tremendous pride in our work and concern for 7 the safety of our citizens, tourists as well as the 8 character of our city's Boardwalk. 9 That being said, it is my belief that the 10 street performers are not going away, although some 11 would like to see this happen. During my travels in 12 the past few years I have seen street performers in 13 New York City, Washington, D.C., and Orlando, 14 Florida. I have witnessed the rights and privileges 15 of our First Amendment being tested right in front 16 of The White House. One would think that during 17 today's heightened homeland security that law 18 enforcement could maintain a clear Pennsylvania 19 Avenue. This is not the case. My observations of 20 events made me realize that there is no possibility 21 that we will be eliminating street performance from</p> | <p style="text-align: right;">Page 12</p> <p>1 get a permit, we could gauge the number of 2 performers that could be up on the Boardwalk. 3 The second thing that Mr. Ayres presented 4 to me and to others was the decision gave the 5 performers the permission to sell their art. And if 6 you've read the memorandum or you would like to read 7 it, I just want to hit you with one passage. On 8 page 38 of the Hollander decision it said this: 9 Chase's argument -- Mr. Chase there on the 10 right-hand side -- Chase's art and performance 11 clearly constitutes fully protected expression and 12 his sale of his own paintings is also fully entitled 13 to the protection of the First Amendment. 14 To me as a law enforcement officer, those 15 are very strong words. 16 How does that impact us? This decision 17 concerned me and our law enforcement guys greatly. 18 I was here when we had the religious group that came 19 to the Boardwalk and sold T-shirts, which a lot of 20 our merchants do sell T-shirts. I remember how they 21 were up in arms and how we handled it. I knew based</p> |
| <p style="text-align: right;">Page 11</p> <p>1 the Ocean City Boardwalk in the near future. 2 I'd like to continue, unless anybody has 3 any questions to start. 4 These are the questions that were asked of 5 me and my answers from the Venable law firm. The 6 first question is identify what Judge Hollander's 7 rulings have required the Town to do with respect to 8 Boardwalk regulations. And I'll take questions from 9 you any time as we continue. And what was explained 10 to me, particularly with Mr. Ayres who presented the 11 case in Baltimore, there's two things that happened 12 after Judge Hollander made her decision. The first 13 was it eliminated the requirement for performers to 14 obtain a permit from City Hall to perform on the 15 Boardwalk. 16 With respect to that, law enforcement now 17 concern me and the guys that work down on the 18 Boardwalk. This decision caused some issues with 19 respect to gauging the number of performers that 20 would be up on the Boardwalk. And prior to that 21 decision our performers would come to City Hall and</p> | <p style="text-align: right;">Page 13</p> <p>1 on this decision that law enforcement would be 2 inundated with complaints, as we were and as we 3 still are today, with respect to people's ability to 4 sell items on the Boardwalk. That was one concern. 5 The second concern based on the injunction 6 issued by Judge Hollander, it explained what 7 expressive material was, and I knew reading that 8 list we were going to be in for it. We were going 9 to have a hard time determining what was and what 10 wasn't. I can tell you we came to City Hall after 11 the decision was made, I met with Mr. Ayres, we met 12 with other people in City Hall, met with Kelly 13 Allmond who also takes the calls from everybody that 14 wants to perform on the Boardwalk, and we got 15 together a list of which we believed would be 16 acceptable performances on the Boardwalk. And I'll 17 eventually get into that, how we performed with 18 respect to expressive material and how we determined 19 what is and what wasn't. It's been a pretty 20 daunting task. 21 That's the answer to my first. Do you</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 guys have any questions with respect to that one? 2 The next question posed to me from Venable 3 was identify what the Town has done to implement the 4 legislation that Judge Hollander modified and that 5 currently exists. 6 From a law enforcement perspective, and I 7 already mentioned this, we had to determine what 8 expressive material was based on her list. Based on 9 that, I came up with this thing called the Gray Area 10 Expressive Material Process, and that's actually 11 laid out on page 10 of your document there. 12 I want to explain this to you with respect 13 to the First Amendment. We operated on a green 14 light principle, the police department did, meaning 15 this: If we got a complaint we would go check it 16 out. If I knew right away that it was against what 17 Judge Hollander said -- the example, if someone was 18 selling jewelry I know that's a no go and I could 19 ask them to go. If I encountered somebody on the 20 Boardwalk who was doing a performance or selling an 21 item that we weren't sure of, this is how it works:</p> | <p style="text-align: right;">Page 16</p> <p>1 attorneys. Anybody that had a question about 2 performers the questions would come here to City 3 Hall, they would be directed to the Chief's 4 secretary, Chief Buzzuro's secretary, who would then 5 send me an e-mail with a question and I'd review it. 6 I could either give an answer right away or again 7 refer to Mr. Ayres or Ms. Stansbury to determine 8 whether it was going to be a green light performance 9 or not. 10 And I will tell you I got an e-mail 11 yesterday about the summer. It's a daily process. 12 I took it on myself with respect to streamlining the 13 process because the more people that got involved in 14 the decision, the more wrong answers they would get 15 and ultimately would make it harder for us to 16 enforce on the Boardwalk and gave it to more than 17 one person. 18 With respect to our Agency, very few 19 limited people are allowed to approach the 20 performers. It was me the first couple years and 21 then last summer I got to train a couple</p> |
| <p style="text-align: right;">Page 15</p> <p>1 We gave them a green light until, number one, I 2 could figure it out or, number two, I would gather 3 all the information and forward to it Mr. Ayres or 4 Heather Stansbury, who is in the audience today, 5 then I'd get a ruling from them and then I'd turn it 6 back to the officers and let them know that it's 7 either a go or a no go. 8 Again, after the decision, the Hollander 9 decision, I thought it was important for the -- and 10 as did Chief DiPino at the time -- important for the 11 merchants to know what was going to happen. So we 12 came to a public hearing here and we presented the 13 new laws. We tried to figure it as much as possible 14 what was going to happen for the next summer. 15 I developed an educational flier in order 16 to handout to the new performers that came up to the 17 Boardwalk and had previously performed and did not 18 know the rules, and gave them the set of new rules. 19 With respect to performers' requests, we 20 streamlined the process. We gave it to one person, 21 and eventually that was me, through the City</p> | <p style="text-align: right;">Page 17</p> <p>1 supervisors. Those are the only guys that should 2 have been approaching our performers on the 3 Boardwalk. Last spring I got to do additional 4 training with our officers just to fill them in on 5 what was going on with respect to the performers. 6 Do you guys got anything? Yes, sir. 7 MEMBER ROTHERMEL: Question, and I don't 8 know if I'm directing this to you or to anyone, but 9 you mentioned that if someone was there selling 10 jewelry, that was a no go. How does one 11 differentiate between someone creating or assembling 12 jewelry and someone making a caricature or spray 13 painting, you know, art? I mean, it might be a 14 rhetorical question but how do you draw that line 15 and how does that work in with Judge Hollander's 16 decision? 17 LIEUTENANT PACINI: Well, with respect to 18 me and law enforcement, I got a list of stuff that's 19 not legal. I could lay them out here for you if you 20 want. And jewelry, one of them stuffed animals is 21 another ones, lotions, candles, perfume. You know,</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 as a lay person I can pretty much figure out what 2 that is, you know. Actually, the request that I got 3 within the last day said I want to sell jewelry on 4 the Boardwalk but it's jewelry that I made. I'm the 5 performer. Can I do it? And I'm pretty much sure 6 that they can't do it. But every day there's 7 questions like that that are in the gray area that 8 either come to me or I got to shoot it to Guy or 9 Heather.</p> <p>10 MEMBER ROTHERMEL: Okay. Thank you. 11 LIEUTENANT PACINI: I wasn't sure about 12 the costume character part. 13 MEMBER ROTHERMEL: I haven't gone there 14 yet. 15 LIEUTENANT PACINI: Oh. We'll get there. 16 Anybody else? 17 The next question is identify the problems 18 that have arisen as a result of the implementation 19 of the law. And this one's kind of long. I think 20 it's a point form but this is things that we 21 encountered on the Boardwalk every day for the last</p> | <p style="text-align: right;">Page 20</p> <p>1 that. Just one more thing that we got to devote our 2 manpower to instead of doing what we're supposed to 3 be doing. 4 Some of the specific issues that, you 5 know, these are some of the gray areas that we come 6 up with and I hope that we can hammer it out towards 7 the end of this process. And these are some of the 8 things that we encountered on the Boardwalk, you 9 know. It would be nice to have a determination of 10 the exact definition of a performer, and I think we 11 can do that. I've seen other ordinances nationwide. 12 I've encountered people selling books. 13 What if people have CDs of music but they're not 14 performing? They just want to stand up there and 15 sell the CDs. We have persons selling paintings. 16 Should they be painting it while they're selling 17 them? We have tarot card readers, henna performers, 18 cartoon characters. First question I got about the 19 cartoon characters was that's got to be against the 20 law. They can't be doing that. There's got to be 21 some kind of trademark infringement.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 3 years. But the question is identify the problems. 2 You know, one of the initial -- the overall problem 3 was we created an uproar with the merchants, 4 citizens and tourists. Every day I'm on the 5 Boardwalk I hear it from all three. Generated a 6 stream of negative press for our City. Not good. 7 Diverted some valuable resources from the police 8 department and City Hall. 9 You know, I forgot to say this in my last 10 one. I handled a majority of the complaints. Do 11 you want to know why? Because I want my guys out 12 there doing the job. On the pictures that I have, I 13 have pictures of weapons. I have pictures of drugs. 14 Those are what we should be dealing with, and that's 15 what I let my guys do while I took care of these 16 complaints. Very important for those guys to be 17 doing that. I'll handle this. 18 One other thing that this ordinance did, 19 it encouraged our merchants to violate City 20 ordinances and conduct street performing businesses 21 on their own. I have very specific examples of</p> | <p style="text-align: right;">Page 21</p> <p>1 So what did I do? I have connections with 2 a private investigator and he put me in tune with 3 the attorneys at Disney and they basically said 4 leave them alone. They're Disney characters. Leave 5 them alone. 6 MEMBER ROTHERMEL: Leave them alone? 7 LIEUTENANT PACINI: That's correct. 8 MEMBER ROTHERMEL: Wow. 9 LIEUTENANT PACINI: And if you look in New 10 York City it continues, you know, even though it 11 came to a crescendo back here in August where they 12 had fights for what street performers in New York 13 City and they talked about how they were going to 14 limit that performance. I haven't seen it yet. I 15 don't know if anybody's read about it. I haven't. 16 Last summer we had our first disk jockey. 17 I missed one. Stages and platforms. Had people 18 erecting stages and platforms on the Boardwalk. And 19 there's one real good picture of a guy that had 20 lighting and he looked like Rod Stewart, he was -- 21 well.</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 With respect to a performer and citizen 2 safety, and this isn't one of the Task Force focus, 3 you know, I have a picture of weapons there. Some 4 of the performers have been in possession of 5 weapons. Spray paint fumes, gas generators, 6 gasoline, the pole dancer. Some of our performers 7 get pushed on to the street a little bit just to 8 allow the crowds to pass on the Boardwalk. 9 Umbrellas. I have a hula hoop performer who entices 10 kids to come in and do the hula hoop with their 11 performance. You know, the touching of other 12 persons, face painting, henna, feathers in the hair, 13 hair braiding which we determined to be not 14 expressive, fingernail painting. That came up last 15 summer. Mr. Ayres said that is not expressive. 16 If we had an ordinance today we would need 17 a general statement about obeying all laws, federal, 18 state, local. We had a proliferation of J-1 and F-1 19 performers last year, you know, performing outside 20 of their rules. Guess what? That's not a local 21 jurisdiction issue that we can deal with.</p> | <p style="text-align: right;">Page 24</p> <p>1 So, you know, we caught a lot of heat with 2 the pole dancer last summer. We didn't move the 3 crowd. We did our best with that. But, you know, 4 we weren't going to move away from our stance with 5 respect to being reasonable with respect to the 6 crowds just because it was a performer that not 7 everybody liked. 8 There's performers out there that have 9 elaborate signs, and I know it really irks the 10 merchants because they got to pay a fee to put a 11 sign out. Now we have performers that have LED 12 lights for the nighttime. That's stuff that has to 13 be looked into. We have performers who laid out on 14 the sea wall doing, you know, outrageous use of City 15 property. We need to look at the footprint of the 16 performers near fire hydrants. Can the performers 17 occupy City bench? That became an issue in early 18 May last year. We had guitar players on the City 19 benches. Can we do that? We were getting 20 complaints. I know the merchant at 9th Street hit 21 us early on last summer and said I think the City</p> |
| <p style="text-align: right;">Page 23</p> <p>1 With respect to the crowd control, one of 2 the questions we get, it's a unique situation with 3 respect to moving the crowd. Mark, why don't you 4 just move them along? Okay. We can do that. I can 5 do that. What if one of them says I'm not moving? 6 Then what are we getting into next? 7 It's not the performer that's blocking the 8 free passage. It's usually his crowd that's 9 blocking the free passage. I can't arrest a 10 performer because his crowd is blocking the free 11 passage, or give him a citation. So believe me, 12 it's been discussed at the highest levels of 13 government what we need to do. And I said sure, 14 we'll tell them to move. And when we tell them -- 15 and I can tell you I've gotten it, and I know you 16 guys are on the Boardwalk -- sir, why don't you move 17 out of the way? And I get the high sign, they tell 18 me no, I'm not moving. F-off. 19 All right. So what am I going to do with 20 that, Forest? Can I arrest them? Is that the 21 posture that we want to get into?</p> | <p style="text-align: right;">Page 25</p> <p>1 has to remove some of the benches. My customers use 2 those benches to have lunch and dinner and now 3 they're being taken up by performers. What can you 4 guys do? So we had that discussion. Basically what 5 we did was we let the performers stay there but they 6 couldn't put their amplifier, they couldn't put 7 their music books or anything like that in order to, 8 you know, to eliminate the ability of the tourists 9 to sit there on the bench. I have a picture of that 10 in there for you of the young lady that I 11 encountered that had the whole bench taken up with 12 her performance. 13 I know you've all seen it but the 14 performers now rope off areas, you know, so people 15 won't encroach their performance area. There's 16 chains, ropes, cones, tip buckets, and again I said 17 LED lights which are, you know, something we need to 18 look at. 19 I've already mentioned it but I think a 20 total of three or four businesses actually put their 21 own performers on the Boardwalk last summer and, you</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 know, one put their own costume performer out there 2 and collect money. At the end of the night they 3 throw it in the till. And the costume character was 4 paid \$7 an hour to perform, you know, tax free. 5 Another issue is the age of performers. 6 How young do we go with respect to how old the 7 performer is out there before they have parental 8 supervision? 9 One issue that we encountered last summer 10 was the abandoned property issue. The performers 11 were coming out on the Boardwalk early in the 12 morning, laying out their claim and leaving their 13 stuff. And what did that lead us to? There's a 14 bomb in the suitcase out on the Boardwalk. You guys 15 need to check it out. 16 The cartoon characters. Children safety. 17 Is our characters sex offenders? We can't just go 18 up to them and say hey, who are you. Can't do it. 19 Not possible. 20 With respect to commercial First Amendment 21 issue, we have merchants who stand on their property</p> | <p style="text-align: right;">Page 28</p> <p>1 noise and us being able to cite a performer. I know 2 because I'm part of the civil litigation in the 3 Hassay case. And all we did was tell them to turn 4 it down and move, the next thing you know I'm being 5 mentioned in civil court. For a law enforcement 6 officer to have that stress, you can bet they're not 7 going to get near it, just to throw that out there. 8 That's a stressor that people don't understand. 9 I know the Task Force talked about this in 10 the first meeting but we need a thorough definition 11 of what expressive material is. That was question 12 3, if you guys got anything to throw at me. Yes, 13 sir. 14 MEMBER KNIGHT: Lieutenant, one question. 15 Two. The educational flier for performers, do we 16 have access to that? 17 LIEUTENANT PACINI: Yeah. I can get you a 18 copy of that. I didn't bring them with me. 19 MEMBER KNIGHT: I'd just like to see 20 what's being handed out on the Boardwalk. 21 LIEUTENANT PACINI: I usually keep them in</p> |
| <p style="text-align: right;">Page 27</p> <p>1 and hand stuff out on to the Boardwalk. We have 2 merchants who hand their merchandise out from their 3 property on to the Boardwalk which I can tell you if 4 it's a flier it just ends up on the Boardwalk. 5 Talking about an overall view here. It just trashes 6 up the Boardwalk. 7 One area that we tend to forget, and Mr. 8 Ayres and Heather and I talked a lot about, is the 9 religious, political and philosophical. It's a 10 whole other ballgame. They're not performers. 11 They're out there preaching or whatever they have to 12 do. And basically short of North Division Street 13 those guys had a run of the Boardwalk. The only 14 issue we encounter with them is religious, one 15 religious group put out a big A frame display of 16 their flyers that they wanted to for the citizens to 17 have. And an A frame is against the City ordinance 18 after a certain time. 19 Number 14 that I have for you is the noise 20 level of the performers. Tough ballgame. It's a 21 very tough ballgame with respect to the ambient</p> | <p style="text-align: right;">Page 29</p> <p>1 my pocket. And they're pretty clear. It's got a 2 map on them and I lay it out to the performers 3 pretty well. I will tell you this: The performers 4 that I encounter follow the law. It's very easy. 5 This is what you can do and what you cannot do. 6 Here it is in writing. And I issued very few 7 performers last year citations. In early May I 8 caught a guy in mid block that was performing. I 9 said here's the thing. Here's your rules. Abide by 10 them. A night later there he was in the same spot, 11 mid block, which he wasn't supposed to be, and he 12 got a hundred dollar citation. 13 MEMBER KNIGHT: Number two, how are most 14 of the amplification devices powered out there? Are 15 they powered by gasoline or powered by batteries? 16 LIEUTENANT PACINI: We did encounter 17 gasoline-powered generators. We had one religious 18 group that actually ran a wire all the way about 19 50 yards on the beach and had their generator way 20 out on the beach. You know, people complained about 21 that and they didn't complain to the police. They</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 called people at City Hall. And the complaint 2 wasn't directly channeled through me. The next 3 thing I know I'm seeing other enforcement officers 4 out there doing enforcement work and I got pretty, 5 you know, I needed to know about it because they 6 don't know if I've already talked to them. And 7 listen, it only takes one hit, it only takes one 8 stop, a suspect stop, for you to have the potential 9 to land in civil court. That's how serious we took 10 it. So which -- they're usually gas. I don't 11 remember seeing any electric ones. 12 MEMBER KNIGHT: A lot of jurisdictions 13 limit it to battery-powered generator, 14 battery-powered amplification. It's mostly gas 15 here. 16 LIEUTENANT PACINI: The one that's easy 17 with respect to that is the guys that are hooked up 18 to the city -- 19 MEMBER KNIGHT: Brass post. 20 LIEUTENANT PACINI: Yeah. That's a 21 no-brainer. And that's actually stated in the</p> | <p style="text-align: right;">Page 32</p> <p>1 go out there to bluff people. We got to know the 2 law and we got to tell them what it is. And the 3 ordinance as it resides now is a little gray. I 4 know it, a couple other of the guys in the Agency 5 know it, but I don't think a lot of them would be 6 real comfortable stopping or encountering a person 7 that was performing with the potential for a, you 8 know, landing in civil court. 9 I've already said it but I think it would 10 help if we could define what a performer is, what 11 constitutes and doesn't constitute a performance. 12 This would be for an ordinance. Me? As a law 13 enforcement officer and the guys we train, we need 14 to lay out an ordinance that has very specific 15 charging sections. You're outside of the confines 16 of where you're supposed to be performing. Here's a 17 citation, or a warning. That needs to be laid out 18 pretty clear for us. 19 I think we need to look at our noise 20 ordinance. I don't know if in your package you got 21 the Santa Monica ordinance. All the documents that</p> |
| <p style="text-align: right;">Page 31</p> <p>1 ordinance. Do you know what they get? They get a 2 warning. If you want to give me a hard time, then 3 we can take it to the next level. But they usually 4 unplug it -- 5 MEMBER KNIGHT: Right. 6 LIEUTENANT PACINI: -- and go unplugged. 7 MEMBER KNIGHT: Thank you. 8 LIEUTENANT PACINI: Yes, sir. Where was 9 I? 10 MEMBER KNIGHT: Question 4. 11 LIEUTENANT PACINI: We're going to 4? 12 We're already there? Okay. The next one. The next 13 question posed to me by Venable was describe the 14 current state of the law. And the current state of 15 our ordinance has been pretty hacked up and I've got 16 that in your packet also and highlighted in yellow 17 is basically what we can't do anymore except as it 18 relates to expressive material. 19 I've already kind of gotten into it but, 20 you know, cops don't work in gray areas. They work 21 in black and white. You know what I mean? We don't</p> | <p style="text-align: right;">Page 33</p> <p>1 I've read, it's very clear to me that those guys in 2 Santa Monica are dealing with pretty much exactly 3 the same thing we are, and they do a nice job of it. 4 Mr. Ayres will tell you that's a different circuit, 5 you know. Can we enforce the same thing here? You 6 know, I think that's for the guys sitting over there 7 to figure out as far as I'm concerned. That's it 8 for 4. Any questions there? 9 The last question I got from Venable was, 10 you know, propose legislative and/or other legal 11 solutions to the Town's problems. We need to review 12 what Judge Hollander's decision and the injunction 13 did to our ordinance. We can review other areas 14 but, you know, I always get an education from Mr. 15 Ayres about that. You know, just because they're 16 doing it in New York City or Fort Meyers Beach 17 doesn't necessarily say we can do it here. 18 I'll give you an example. Fort Meyers, 19 actually one of our performers on the Boardwalk 20 performs in Fort Meyers and on his display is his 21 Fort Meyers permit. I can pretty much tell you</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 nationwide you don't need a permit to perform. 2 Several other jurisdictions have said you don't need 3 a permit to perform. And we can't require it. 4 Ultimately I think we need an ordinance to hit 5 several of the areas that I stated. And this may 6 cause controversy but, you know, the merchants that 7 are conducting business on the Boardwalk as street 8 performers need to be dealt with accordingly. 9 And although I think it only can be in 10 wording only, you know, we have to have a very 11 strong wording in our ordinance about the Homeland 12 Security rules with respect to our, you know, our 13 foreign students that come here in the summertime. 14 Eventually if we get to that point, you know, 15 towards the end or the beginning of the summer we 16 need a pretty darn good public relations campaign to 17 get the word out and let everybody know what's going 18 on. Makes it easier for us to enforce. Makes it 19 easy for you merchants to understand that those are 20 the rules. There's no sense calling the police 21 because I know what the rule is and we can go about</p> | <p style="text-align: right;">Page 36</p> <p>1 So I guess the point I'm making is, you 2 know, in other jurisdictions in the nation the Chief 3 of Police says you're closed. Now, that might be 4 too much power for one person or run it through the 5 Mayor or run it through the Council, but we don't 6 have all summer to get it done. Because once one 7 merchant does it, one of two things happens. The 8 others follow suit or the others complain that 9 they're not being treated fairly. 10 MEMBER KNIGHT: Thank you. 11 CHAIRPERSON SHOCKLEY: Any incidents of 12 Boardwalk store owners enforcing their own justice 13 in this, going after a street performer, or has that 14 not raised its head yet? 15 LIEUTENANT PACINI: I talked about it in 16 my opening statement and actually that was the 17 impetus for that statement. In March, I believe, 18 I'm sorry, on May 24th we had one business owner 19 that was extremely upset at those henna tattoo 20 stands directly across from their business and they 21 schemed all winter, as far as I'm concerned, and</p> |
| <p style="text-align: right;">Page 35</p> <p>1 our business and everybody can pretty much live 2 together. 3 That was the last, that was question 5, 4 the last one. Any questions on that one? Or in 5 general overall? 6 CHAIRPERSON SHOCKLEY: Any questions? 7 MEMBER KNIGHT: In respect to the 8 merchants conducting business on the Boardwalk if 9 you know that they're merchants I think that can be 10 handled under the zoning laws as far as exchanging 11 funds outside of their stores. I don't know that. 12 I just thought it might be another avenue. 13 LIEUTENANT PACINI: I've dealt with a 14 couple. I've cited a couple. I've also gone the 15 route of going after the business license. I've 16 done that with one pizza business in Town who 17 continually broke City ordinance. But that's not an 18 easy task. That's a lot of work. And then 19 eventually it's got to go before Mr. Recor and he 20 has to have a hearing and then we gotta make a 21 decision.</p> | <p style="text-align: right;">Page 37</p> <p>1 they showed those guys. The first day of Memorial 2 Day last year they put their own stand out there and 3 they moved their stand, the actual performer, they 4 moved their stand 3 feet and they proceeded to 5 threaten the performer. "I'll kill you." 6 And when we talk about crime and the fear 7 of crime, I wasn't too happy being in charge of that 8 Boardwalk to hear some merchant threaten a 9 performer. Because what's that do? That just 10 permeates, that rides all the way up the Boardwalk 11 and that's what lands us in the newspaper. That's 12 what gets people talking about how the Boardwalk is 13 so unsafe because we got merchants out there 14 threatening performers so they can stick their own 15 stand out there and make money. 16 CHAIRPERSON SHOCKLEY: Thank you. I'd 17 like to thank the Mayor and Council and thank the 18 Chief of Police and Mark in particular that we have 19 somebody out there that's reasonable and has taken 20 the time, not only his time on the job but in his 21 own time, to research and understand the issue. I</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 mean, it clearly is an issue but I think the police 2 department has been very fair and very decent in 3 their dealings with both sides. I mean, if not it 4 could have been, I mean the situation could be much 5 worse than it is now. But we've been able to work 6 through the problem as it exists today with Mark and 7 the police department. And I mean, it's not perfect 8 but I mean, we have, it works and no incidents are 9 generated out of this. So Mark, thank you and 10 Chief, thank you for tasking and taking care of 11 this. Anybody have anything else for Mark? 12 MEMBER ROTHERMEL: Thank you for your 13 service. 14 CHAIRPERSON SHOCKLEY: Thanks, Mark. Next 15 up is Lieutenant Ward Kovacs of the Beach Patrol. 16 WARD KOVACS: Good evening. I'm Ward 17 Kovacs. I've been with the Ocean City Beach Patrol 18 for 33 years, with the exception of 3 years where I 19 was stationed at 65th Street I've been downtown that 20 whole time in the Boardwalk area. And I'm here 21 because Mr. Ayres asked me on Thursday if I had</p> | <p style="text-align: right;">Page 40</p> <p>1 Beach Patrol, as many of you are familiar with our 2 Junior Beach Patrol, that runs for 6 weeks 3 concurrently during the summer. Some of those weeks 4 we have two sessions. We have morning sessions and 5 afternoon sessions. So we do quite a few crossings 6 of the Boardwalk to bring materials out there. 7 Down there at Dorchester Street is where 8 we conduct our testing for upcoming lifeguard 9 seasons. So we do, those days we do a lot of 10 crossings. 11 I did a poll of our officers who are 12 stationed in the south end and we average between 20 13 and 40 Boardwalk crossings at Dorchester Street on a 14 daily basis with either trucks or ATVs. And it 15 depends again like on a Friday it will be the 40 on 16 Monday, Tuesday, Wednesday it may be closer to 20. 17 But it's roughly a 30 average crossings per day. We 18 take our hundred main days of the season, that's 19 3000 crossings per season at that one street 20 location. 21 The early part of the day, the first third</p> |
| <p style="text-align: right;">Page 39</p> <p>1 anything that I thought would contribute to the 2 conversation. I believe I do over that time that 3 I've been around. 4 My scope of interest is significantly 5 smaller than Lieutenant Pacini, roughly 1-40th the 6 size, as I'm concerned with one of the blocks on the 7 Boardwalk and that is mostly Dorchester Street. 8 Since 1992 when we were moving from Worcester Street 9 and the Boardwalk to our location currently at 107 10 Dorchester Street our access to the beach now is by 11 going up Dorchester Street, crossing the Boardwalk 12 there and then going out on to the beach. So from 13 1992 that's been our primary access. 14 We have, the majority of our vehicles 15 since that's where our headquarters building is are 16 at Dorchester Street including our ATVs and our 17 pickup trucks and our covered SUVs. That's where 18 the Lieutenants and the Captain operate. We're the 19 ones who are assigned the covered vehicles. The 20 pickup trucks are down there for the special events 21 that we have in the downtown area. Also our Junior</p> | <p style="text-align: right;">Page 41</p> <p>1 of our shift, we work 10 o'clock to coming off the 2 beach still at 6 o'clock in the afternoon, the first 3 third of our shift we rarely encounter any 4 performers there. The second third occasionally 5 we'll encounter someone. But it's that last third 6 portion of our shift when every crossing involves 7 performers. Every single one. 8 So the numbers basically are roughly a 9 thousand crossings on the Boardwalk are delayed per 10 season due to performers. And to be fair, most of 11 them are just inconveniences while we're bringing 12 materials to the beach or retrieving materials from 13 the beach, or personnel, broken lifeguard chairs. 14 That kind of thing. Most are just an inconvenience 15 to us. But on the other hand, some are 16 life-threatening delays. Whether we're trying to 17 get to someone who is in the surf in a multiple 18 victim rescue, our ATVs and our SUVs, pickup trucks 19 are all equipped with our defibrillators. That's 20 the only place we have them. We don't have them on 21 the beach anywhere just because of the environment.</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 We don't want them exposed to the sand, humidity and 2 things like that.</p> <p>3 So anytime some needs defibrillation on 4 the beach it's coming on one of those vehicles. And 5 it becomes really important to us, obviously, to get 6 them there quickly. Most of the time the performers 7 will get out of our way. They'll tend to try and 8 finish their, whatever trick they're working on, 9 whatever joke they're working on. There's a delay 10 there. It's an inconvenience to them, too, I 11 understand, to try to get everybody moved and to 12 move all their equipment.</p> <p>13 I think the thing that they don't 14 understand is that a lot of times we're going to 15 save somebody's life and that becomes a big problem. 16 Again, it's rare that we'll need to go beyond asking 17 them ourselves to move. It does happen sometimes 18 where, like I know this past summer one of our 19 lieutenants was trying to cross and the performer 20 failed to stop performing when he obviously saw the 21 Lieutenant driving up the Boardwalk and made</p> | <p style="text-align: right;">Page 44</p> <p>1 there, we went to respond and we were delayed trying 2 to get across the Boardwalk. There was a large 3 crowd out there trying to move out of the way, which 4 left the Sergeant out in the heavy surf with an 5 unconscious person by himself. And it was the next 6 off duty drowning of the season, again the 7 lifeguards were off duty, I happened to be out late 8 on the beach because I was returning from an 9 assignment I had on the north end of Town. As I 10 worked my way down, I heard the fire department call 11 out for a water rescue, and I was the first one to 12 the scene, the first one there. And on that 13 occasion the roles were reversed and Sergeant Heubel 14 was trying to respond to help me out and was delayed 15 trying to cross the Boardwalk, again leaving me out 16 by myself for a while.</p> <p>17 My request would be that any consideration 18 of adding a second block that's restricted for 19 performances. I know currently North Division for 20 many reasons is restricted. They've been requested 21 to keep that open for large fire apparatus to come</p> |
| <p style="text-align: right;">Page 43</p> <p>1 eye-to-eye contact. The Lieutenant exited the 2 vehicle, went over to approach the performer. The 3 performer said he was not going to move. He was 4 told he was allowed to be there. And to his credit 5 Lieutenant Pacini was quickly there to the scene, 6 did exactly as he just described to you. And I 7 guess a shield and a gun mean a lot more than a 8 whistle and a bathing suit, too. But the 9 performer at that point did move. But that, to me 10 that's inexcusable. Fortunately, again, that's not 11 the norm.</p> <p>12 I know twice this season when we had off 13 duty drownings at the end of the day roughly around 14 6 o'clock when the guards left the beach on one 15 occurrence one of our sergeants was returning to 16 headquarters from our 27th Street out building, 17 actually saw the person face down in the water. He 18 initiated a response to that. I was the only one 19 left at headquarters with my truck with emergency 20 lights and a siren, and I grabbed one of the other 21 lifeguards who lives in employee housing right</p> | <p style="text-align: right;">Page 45</p> <p>1 up from the Boardwalk.</p> <p>2 Also for the visual with the arch there, 3 people want to take pictures with normal Boardwalk 4 traffic, a lot of different reasons go into that.</p> <p>5 I would ask that we also add Dorchester 6 Street to that restriction if at all possible.</p> <p>7 It's unsafe for our ATVs to drive down 8 Baltimore Avenue. There's no protection on the side 9 of that. There's no lights on the side of it for 10 working late in the afternoon. Also, the tire 11 pressure that we keep in those to use operationally 12 on the sand is so low that any type of quick turning 13 that you try to do on a paved service can cause it 14 to roll over. Also, it's illegal to use them on 15 Baltimore Avenue for transit.</p> <p>16 So we just, our only access there is to go 17 straight across at Dorchester Street. So to try and 18 alter that course and go up North Division Street, I 19 mean to go from Dorchester to North Division on 20 Baltimore Avenue really isn't a safe option for us. 21 And a lot of times with the traffic that we have</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 down there during the day even to have to take an 2 SUV or a pickup truck down to North Division Street 3 and fight through that traffic to get there, again 4 you're delaying the response when someone might be 5 trapped at the end of a rip current or looking at 6 their child laying on the beach that needs 7 defibrillation with the AED that can't get there in 8 time. Again, Dorchester Street really is going to 9 be our option going into the future, and I thank the 10 Mayor and Council for agreeing to build a new 11 building there for us, but what that means is we're 12 going to be there for a while. And it's also the 13 police department's, or the fire department's 14 station, too, is on Dorchester Street.</p> <p>15 I know from just my experience being the 16 one whose calling for the ambulances any time you 17 have the Sand Duel Soccer tournament or other events 18 down there like the Dew Tour, that's one of the main 19 accesses for EMS. They pull right up onto the 20 Boardwalk down there. And again, any time they have 21 to be delayed is delayed care for their patients.</p> | <p style="text-align: right;">Page 48</p> <p>1 We're not going to go up there and blow the siren in 2 an infant's ear while he's passing by a stroller. 3 I'm not going to do that. I'm just hoping that we 4 can add that street to the exempted streets for the 5 performers. And I know Mr. Funkhauser's not over 6 there anymore. Kelly, do you have the ability to 7 put some of these pictures on the projector? 8 KELLY ALLMOND: I do. 9 WARD KOVACS: A picture is worth a 10 thousand words. If you can see where the performer 11 is, he's got his back toward the vehicle. You got a 12 large area roped off. 13 In this picture we have the vehicle 14 approaching the performer from the back so the crowd 15 is actually able to see the vehicle which is to our 16 advantage because then when they see the vehicle as 17 long as he's allowed to keep going a little bit they 18 kind of get the idea and they start to move. 19 As long as the performer chips in and 20 helps us to get the crowd going. 21 But you can see it's a large group of</p> |
| <p style="text-align: right;">Page 47</p> <p>1 Really, I just, again most of the time, I 2 want to be fair to the performers, most of the time 3 it's just a time delay when we're moving equipment 4 around but those critical times when it is delaying 5 our response to an emergency, you know, it's the 6 worst feeling when you know it's right there and you 7 can't get to it because there's people in your way.</p> <p>8 A lot of times for us I've learned over 9 the years that the easiest way to drive across that 10 Boardwalk is to not stop. When you pull up on the 11 ramp you've got to keep the vehicle moving, even if 12 ever so slightly, so you're making your intention 13 known to all the people around. As soon as you come 14 to a complete stop, they have no idea that you're 15 trying to drive on to the beach, or the other way, 16 they don't know my headquarters is down Dorchester 17 Street. And once you come to a complete stop 18 pedestrian traffic resumes and it makes it much, 19 much harder to get across.</p> <p>20 I've heard people tell me, you know, well, 21 just blow your siren. Well, that's not Ocean City.</p> | <p style="text-align: right;">Page 49</p> <p>1 people. There's people with strollers there. Small 2 children with other things that they've put out on 3 the Boardwalk there. It takes quite a while to get 4 them to move.</p> <p>5 Here's another view of the same thing I 6 was talking about before where you have the roped 7 off area, and this is what I was trying to explain. 8 When the vehicles have to come to a stop, and you 9 can see the pedestrians are no longer looking at a 10 large truck moving at them. They're looking at the 11 performer over here. So at that point the game is 12 kind of over for a while.</p> <p>13 This one's a little bit darker but here 14 you see our other problem. Now, here you have the 15 performer, as Lieutenant Pacini was trying to 16 explain, he's set up all around the fire hydrant and 17 if you see there's little red lights over here. 18 That's the beach patrol truck trying to get across 19 this way. Here we have the problem where the 20 performer doesn't want to stop performing. The 21 crowd has no idea the truck is trying to get across.</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 Another view of the same thing where now 2 the crowd has started to encroach to make a complete 3 circle around. 4 Again, here from a little bit further away 5 you can see the size of the group that's gathered 6 around there and the beach patrol truck trying to 7 get through. 8 And again the same thing from the, trying 9 to drive from the west to the east. The crowd's 10 back is toward the truck now, has no idea the truck 11 is coming, so the truck has to come to a complete 12 stop and then pedestrian traffic continues. It's 13 almost impossible to start back up again. 14 Again, I'm not a person who is going to 15 blow a siren in that kid's ear. 16 Here's another view of what Lieutenant 17 Pacini was talking about with the roped off area. 18 He's taking quite a large chunk of the Boardwalk and 19 the cement pad. And that's all the pictures I have. 20 CHAIRPERSON SHOCKLEY: Anybody have any 21 questions for Ward?</p> | <p style="text-align: right;">Page 52</p> <p>1 end of a rip current I think you'd want that 2 inconvenience to go away if at all possible. 3 MEMBER ROTHERMEL: Mark, how do you define 4 who will draw a big crowd, who doesn't in advance? 5 MEMBER CHASE: Traditionally if you have 6 the intent of drawing more than 20 people, you're 7 traditionally considered a circle show. You're 8 there for that purpose of drawing such a large 9 crowd. Like magicians, like myself, for instance, 10 jugglers, their intent is to draw that large crowd. 11 If you limit what actual activity could take place 12 on the street, you could limit the actual crowd 13 building. If you forbid magicians, jugglers, anyone 14 who has that large intent of doing such. You can 15 also limit it to musicians that are unamplified and 16 hand-held musical instruments. That would still 17 allow I think free speech to be there but also 18 accommodate you if it's a hand-held instrument, 19 would it not, unamplified? 20 WARD KOVACS: Again, if you have a really 21 talented musician show up there you might draw a</p> |
| <p style="text-align: right;">Page 51</p> <p>1 MEMBER CHASE: I have a couple. Is it 2 just mainly the type of performers that draw those 3 large crowds that is the issue, or if like the -- I 4 know you've been up on the Boardwalk. Like 5 musicians that have hand-held instruments and all 6 that that really don't draw crowds. Is it just 7 mainly the ones that draw the large crowds that 8 hinder your abilities and where they're actually 9 situated on the street? 10 WARD KOVACS: It depends. Again, it's an 11 impedance to our travel regardless of whether they 12 have a large crowd or not. A lot of times they'll 13 have booths, kind of booths set up and so they have 14 to move, physically move the booth. Some of the 15 musicians will have speakers with cords that stretch 16 out from where their stool is. So once you get 17 their attention, make it clear to them what your 18 intentions are, they still have to get up, move 19 their stool and move the other things out of the 20 way. Again, a lot of times it's just an 21 inconvenience but if it was your child stuck at the</p> | <p style="text-align: right;">Page 53</p> <p>1 bigger crowd. 2 MEMBER CHASE: And then he would be 3 considered a circle show and he would have to move. 4 MEMBER GERACHIS: Wouldn't it just be 5 common sense to say no performers? I mean, just 6 common sense? Don't even risk it. 7 MEMBER CHASE: I'm all for that. 8 MEMBER GERACHIS: I think it would be in 9 your opinion for a safety factor don't you think it 10 would be better just to say no performers at that 11 street? 12 WARD KOVACS: Absolutely. 13 MEMBER GERACHIS: I think it's pretty 14 straightforward. 15 MEMBER CHASE: I have no problem with 16 that. 17 MEMBER GERACHIS: I don't think there's an 18 issue there. 19 MEMBER CHASE: Down the line -- 20 MEMBER GERACHIS: I don't think there is a 21 down the line.</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 MEMBER CHASE: No. Down the line if you 2 do have a performer that shows up with a hand-held 3 instrument -- 4 MEMBER GERACHIS: That's why I think we 5 need to stop it right from there and that way the 6 police department doesn't have to determine who can 7 be there and who can't. I think it's easier just 8 not to have them there. It's a safety factor. 9 WARD KOVACS: It seems like you would be 10 adding pages and pages of gray area to Lieutenant 11 Pacini's book. 12 MEMBER CHASE: But you can 13 easily well-define it. 14 MEMBER GERACHIS: I think it's harder than 15 you think. 16 CHAIRPERSON SHOCKLEY: The judge has 17 allowed public safety to -- 18 MEMBER CHASE: Exactly. 19 CHAIRPERSON SHOCKLEY: -- dictate 20 exclusions. North Division is an exclusion and, I 21 mean, there seems to be something we can move</p> | <p style="text-align: right;">Page 56</p> <p>1 spine of economic activity, not only in the downtown 2 area but most of Ocean City. 3 I've been here since 2000, got here a 4 little after the OCDC was formed. I would say this 5 year we've probably seen more Boardwalk entertainers 6 and artists than I've ever seen before since I've 7 been here. 8 As I mentioned, this year I think we've 9 seen the most performers and artists on the 10 Boardwalk that I've seen in my 15 years here. This 11 is probably a good thing to show the health of the 12 Boardwalk. The fact that you have that many artists 13 and performers coming here, there's a reason why 14 they're coming here, both to showcase their talents 15 as well as to earn some money. However, too much of 16 a good thing always isn't a good thing and whether 17 it's reached a point of saturation I don't know but 18 there's something this last year. So whether it 19 will continue into this next summer one would assume 20 having possibly more entertainers. 21 Observation-wise, I think Lieutenant</p> |
| <p style="text-align: right;">Page 55</p> <p>1 forward with as looking at Dorchester Street as an 2 exclusion for public safety. 3 WARD KOVACS: That's all I would ask. 4 MEMBER CHASE: I'm all for your safety. 5 CHAIRPERSON SHOCKLEY: It's one street out 6 of, as you said, 40 out of 20 that are key streets. 7 Any other questions for Ward? 8 MEMBER GERACHIS: No. 9 CHAIRPERSON SHOCKLEY: Ward, thank you. 10 WARD KOVACS: Thanks. 11 CHAIRPERSON SHOCKLEY: Glenn Irwin. 12 GLENN IRWIN: Good evening, Glenn Irwin. 13 I'm the Executive Director of the Ocean City 14 Development Corporation. Just for anyone not 15 familiar, we're a non profit organization charged 16 with downtown revitalization. We are also active in 17 the Boardwalk through our Boardwalk committee. 18 The comments I just want to make and we 19 can kind of look at the whole picture we realize the 20 importance of the Boardwalk. I'm sure that's been 21 discussed among you very much before. It is the</p> | <p style="text-align: right;">Page 57</p> <p>1 Pacini hit on most of them and many of them just may 2 not be new to most people, but speaking with 3 merchants off the Boardwalk, on the Boardwalk, the 4 Boardwalk merchants who sell the same products, 5 that's a continuing complaint you've probably heard 6 many times before. They feel that, the merchants 7 with the stores do feel like they're at an unfair 8 disadvantage. The store merchants must pay higher, 9 just rents and also have a business license. I 10 think Lieutenant Pacini also mentioned they need to 11 have a sign licensed by the Town of Ocean City as an 12 additional cost. The performers do not need to have 13 these costs. 14 The unorganized system of spot selection 15 it is a first come first served and really I think 16 has always been that way in Ocean City. Just as a 17 business person knows the Boardwalk performers and 18 artists know that location is extremely important in 19 setting up one's operation whether it's for a year 20 or for one day. And you do see this claiming 21 Boardwalk locations that Lieutenant Pacini</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 mentioned, performers are showing up first thing in 2 the morning. I'm sometimes on the Boardwalk 6:00, 3 6:30, they're either sitting in a lounge chair or 4 have a cart just claiming their spot. And 5 particularly as you go further south along the 6 Boardwalk.</p> <p>7 There is an issue of territorial. I think 8 he also mentioned about roping off areas. That's 9 not incidental. That's pretty common, I think, 10 whether it's during a performance or whether it's 11 just to reserve your spot that happens quite a bit.</p> <p>12 The lack of rotation of performers, and 13 this is more, it's probably not even any type of 14 legal issue. It's just having Boardwalk stores and 15 residents, whether hotel users, have complained to a 16 point they see a singer there for the whole week 17 that they're there. It's just very repetitive. The 18 Boardwalk merchants probably hear the same thing for 19 the whole summer. I must say some of the performers 20 and musicians are very good, some not so good. But 21 you get what you get. But variety would be</p> | <p style="text-align: right;">Page 60</p> <p>1 There's just too many of them at a few locations. 2 They overwhelm the Boardwalk. I think again this 3 past year was a good example. And I think it 4 reduces the enjoyment of the Boardwalk experience 5 for visitors, residents and Boardwalk merchants. 6 That's all I have.</p> <p>7 MEMBER ROTHERMEL: Lieutenant Pacini and 8 you also mentioned that some stake out their claim 9 earlier in the day. What's not being said is why 10 anyone thinks that happens.</p> <p>11 GLENN IRWIN: I've been there 12 particularly, I see it at the peak of the system 13 particularly around the pier where there's a prime 14 spot north and south of the pier and particularly 15 with the henna tattoo carts where I'll see --</p> <p>16 MEMBER ROTHERMEL: Prime because it's 17 their personal First Amendment rights or prime 18 because it's a lucrative financial position?</p> <p>19 GLENN IRWIN: Oh, lucrative. It's mostly 20 lucrative.</p> <p>21 MEMBER ROTHERMEL: Thank you.</p> |
| <p style="text-align: right;">Page 59</p> <p>1 beneficial.</p> <p>2 One recommendation I just wanted to make, 3 again not looking at it legally, I'm sure it's been 4 discussed, is possibly a lottery system for 5 locations. This would kind of level the field by 6 spreading performers out, not concentrating them in 7 an area. You do find a number of performers at 8 street ends 4 or 5 at one time, not necessarily the 9 performers who, I think Mark Chase mentioned, that 10 create a big audience. You have others that create 11 a big audience but there may be just due to the 12 numbers of performers there, and this lottery system 13 could spread out those performers.</p> <p>14 And as far as sometimes they do get into, 15 I think Ward Kovacs mentioned about blocking 16 selections, the segments of the Boardwalk as well as 17 the ramps coming up the street.</p> <p>18 The last thing I'd just like to mention 19 that, I'd like to add that the Boardwalk performers 20 have been a part of the Boardwalk for many years and 21 do add an interest and attraction for tourists.</p> | <p style="text-align: right;">Page 61</p> <p>1 GLENN IRWIN: And where you'll see 2 somebody in a lounge chair. I don't know what time 3 they got there. Often I'll be down there bicycling 4 6:30 in the morning, I'll see someone almost look 5 like they're sleeping or in a lounge chair next to 6 the cart. I don't know if they've slept there the 7 whole night or not but that, you know, I've seen 8 that several times happening in the peak of the 9 summer season.</p> <p>10 MEMBER CHASE: I do know last year 11 performers had to show up early because the stores 12 were actually putting the hennas out there and 13 taking their spots. It was kind of we were forced 14 to actually be out there early, otherwise we didn't 15 have one, or a spot. Because traditionally 16 performers don't like to get out there until 3:00, 17 4 o'clock when the sun starts going down just 18 because during the day it's too hot. But mainly the 19 ones that do show up early such as last year when we 20 had that henna fiasco we had, we were pretty much 21 forced to be out there, otherwise the hennas had</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 taken all our things. I think if we are able to 2 actually regulate, I mean not just time but I mean 3 -- how can I say this delicately? I mean, the 4 longevity of how long a performer can leave his 5 stuff unattended on there, that is definitely 6 controversial, I mean. Personally, a performer 7 should never leave his performance area unless he 8 plans on wrapping up for the day. That's just my 9 opinion. Would that help solve some of the issues 10 or concerns that the merchants you think have or -- 11 GLENN IRWIN: There's such a selection of 12 concerns, that would just be one of them, I think. 13 Yeah. 14 CHAIRPERSON SHOCKLEY: Anything else? 15 Thanks, Glenn. 16 GLENN IRWIN: Okay. Thank you. 17 CHAIRPERSON SHOCKLEY: Joe Kro-Art. 18 JOSEPH L. KRO-ART: Good evening, Joseph 19 Kro-Art, III, Ocean Gallery. Thank you, all five of 20 you, for serving on this Task Force. I'd like to 21 begin by just, you know, speaking generally kind of</p> | <p style="text-align: right;">Page 64</p> <p>1 You do nice work, by the way. 2 MEMBER CHASE: I've bought stuff from your 3 store, too. 4 JOSEPH L. KRO-ART: It all works out in 5 the end. But I've heard people say well, should we 6 buy this? Well, we already spent \$40 on this. And 7 that's, you know, it's not like buying a 8 cheeseburger where the next day you need another 9 cheeseburger. 10 Anyway, there are two points that I really 11 want to make here to kind of narrow the scope of 12 this. First is about the health of our tourism 13 economy. Some of us benefit from this directly -- 14 you, you, you, me, some indirectly. Everybody in 15 this room whether directly or indirectly if we're 16 living here it's because of our tourism economy and 17 that is something that all of us need to keep in 18 mind. 19 There is value overall in the street 20 performers. I have come to see that. I take my 21 young daughters down the Boardwalk. It is something</p> |
| <p style="text-align: right;">Page 63</p> <p>1 echoing some of what Lieutenant Pacini said. You 2 know, it took me a long time as a merchant to get to 3 the point where I realized that street performers 4 aren't going anywhere. And I don't think that my 5 father's reached that point. I don't know that 6 he'll ever reach that point. But I think that the 7 sooner that we all reach that point the better we're 8 going to be able to work through some of these 9 issues. 10 And really, you know, some of you might 11 say oh, yeah, well, Kro-Art, you might feel that 12 way, that's fine. But you consider what our 13 business is as an art gallery and selling retail 14 art, you can make the argument that our business has 15 been hurt just given the sheer number of artists 16 that have set up as performers. Our business has 17 been hurt as much as anyone's. I'm sure that henna 18 tattoo businesses and whatnot, they feel that same 19 sort of pain. Art is a discretionary thing. 20 Mark, many, many times I have had somebody 21 come in and they're holding one of your paintings.</p> | <p style="text-align: right;">Page 65</p> <p>1 that adds to the Boardwalk experience. When my 2 father started out in the '60s when people like Bill 3 Ochi and Tony Russo and Perry Tillis were all 4 getting together the Boardwalk was the draw in Town. 5 I mean, if you came to Ocean City you were at the 6 Boardwalk. Ocean City has become fragmented, 7 though. If you're staying up at 142nd Street are 8 you coming down to the Boardwalk like you did 9 20 years ago? Not necessarily. We need things to 10 add value to the Boardwalk and to add value to the 11 experience. 12 The sooner that many of us realize that, 13 you know, the better that we're going to be able to 14 work through some of these issues. 15 The second point is kind of tied in with 16 the first point. We have to ensure that our 17 visitors are safe, and this goes to a number of 18 things. Lieutenant Pacini was talking about the bad 19 PR that Ocean City can receive from time to time. 20 When a family shows up on the Boardwalk and they 21 start walking down, you know, I've seen over the</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 years many people think that Ocean City is one 2 single corporate entity. We get phone calls at the 3 store and they'll say hey, can you tell us what time 4 Fisher's popcorn opens? Like I have anything to do 5 with a popcorn stand 4 blocks down. But they think 6 of Ocean City as being dike Disney World, just all 7 connected. So there's often an assumption, too, a 8 wrongful assumption, that when you take your family 9 on the Boardwalk there's something on the Boardwalk. 10 It must be safe. There are some things that, you 11 know, maybe aren't safe on the Boardwalk, some with 12 the performers, some otherwise. But it gives the 13 impression that if it's on the Boardwalk, it must be 14 sanctioned by the Town so it must be safe. 15 So if that's the case then the Town sort 16 of has a duty to watch out for the dangers, to try 17 and regulate them, to make things okay. If they 18 don't, you know, they have a duty to protect 19 visitors from harm. They have a duty to protect the 20 reputation of Ocean City as a tourism destination. 21 If we had some incident happen -- there was a fellow</p> | <p style="text-align: right;">Page 68</p> <p>1 my daughters with some guy in West Ocean City who's 2 giving them guitar lessons who I think I know and we 3 find out years later we don't. I'm not trying to 4 put everything -- I'm making the point here, you 5 know, we don't know anybody in life here. But I do 6 think that, you know, because of that anonymity I 7 think that a permitting system for an ID card for 8 anybody wearing a costume might be a good idea. 9 One, it gives people a quicker recourse in case they 10 have to identify somebody who might have done 11 something kind of silly. And second, it could act 12 as a deterrent, too, to anybody because it's taking 13 away that person's anonymity. 14 If you know people can't see you, maybe 15 you're more prone to doing something. 16 Henna artists, body painting, face 17 painting, again perhaps there should be a discussion 18 about whether this should be regulated from a health 19 standpoint. If we agree that Ocean City has a duty 20 to protect its visitors from potential harm and we 21 don't really know, you know, and these people are</p> |
| <p style="text-align: right;">Page 67</p> <p>1 last summer, my father told me about it, I didn't 2 see it, he was swinging a sword or a spear around 3 and dancing all over it and everything. And people 4 think oh, well, that's safe. So they walk up and 5 they're all standing around. What if on a hot day 6 his hands are slick from sweat and it goes flying 7 out, hits some kid. Whose liability is that? I 8 mean, certainly there's some on the Town if they 9 know that he's out there and they haven't done 10 anything to regulate it. So we have to watch things 11 like that. 12 A couple of solutions. I know some people 13 feel strongly about the costume characters. I don't 14 feel, you know, I don't want to get rid of them as 15 vehemently as some people do. I think they add 16 value, too. I've watched my daughters. They see 17 Elsa or Olaf from Frozen and they get so excited and 18 block after block after block it's the same thing. 19 And yes, I don't know who's behind that costume. 20 But when I'm taking a picture of my daughters with 21 Olaf I'm watching them. It's not like I'm leaving</p> | <p style="text-align: right;">Page 69</p> <p>1 assuming that anything because it's on the Boardwalk 2 it's safe, then maybe we need to take a look at 3 what's going on there. 4 Now, there is expression in that, yes. 5 But perhaps some sort of code where you can't paint 6 on somebody's body but you can still paint on a 7 piece of paper and that gives them the alternative 8 avenue for expression. The expression is still 9 there. 10 And finally, performers need to realize 11 the importance of regulating their own conduct, too. 12 Mark, you know the industry, do people insure 13 themselves? 14 MEMBER CHASE: I know a select few of us 15 do. I do have insurance myself just because I do 16 craft shows. Offhand, I know of at least one other 17 guy who does but I can't vouch for everyone because 18 I don't, you know, we're not all friends. We're 19 associates just like business owners but we're not 20 friends that really hang out. 21 JOSEPH L. KRO-ART: Right. Okay. There</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 is, if something were to happen where does the 2 liability fall? I mean, if I'm a plaintiff's 3 attorney and I'm looking at suing you and you don't 4 have insurance, or suing the Town of Ocean City for 5 being negligent, well, I'm going to -- where's the 6 money? 7 But I think that, the reason I'm bringing 8 this up is that for all of us to make this work -- 9 I've never seen Jim's dinosaurs bite anybody in all 10 the years, and he's been doing this stuff since I 11 was young. But there are some dangers here, and I 12 think that the performers need to take a good look 13 at what they might do to mitigate some potential 14 harm. That's all I have. 15 CHAIRPERSON SHOCKLEY: Any questions? 16 Joc, you and I have had this conversation before, 17 can you briefly articulate your tax base argument? 18 JOSEPH L. KRO-ART: The Town of Ocean City 19 -- and I do want to make one more point to that, 20 too. The Town of Ocean City has, Judge Hollander's 21 opinion from your case a few years back she alluded</p> | <p style="text-align: right;">Page 72</p> <p>1 sure that the merchants can be viable. 2 CHAIRPERSON SHOCKLEY: Anything else? 3 JOSEPH L. KRO-ART: Yes. The last thing 4 was just the, regarding those permits, you know, 5 again Judge Hollander said that there was no 6 articulation of why permits, what the interest was 7 to having permits. There would be an interest, I 8 think, and I'll leave that up to the more legally 9 trained and experienced than me. I think that there 10 would be a compelling interest, or at least an 11 important interest, in safeguarding the public 12 safety thing knowing the identity of people behind 13 those costumes. I think that that would fly in the 14 face of a constitutional challenge. 15 CHAIRPERSON SHOCKLEY: Thank you. Anybody 16 for -- anything else? Thanks for coming down. 17 Appreciate it. 18 JOSEPH L. KRO-ART: Hey, Mark, can you 19 just promise never to incorporate pole dancing in 20 your act? 21 MEMBER CHASE: Well, I thought about being</p> |
| <p style="text-align: right;">Page 71</p> <p>1 to the fact that the Town had not articulated any 2 sort of, I mean the public safety aspect was there, 3 the economic argument was missing as far as 4 justification for it. 5 The Town has an interest in protecting its 6 tax base. This goes back to the tourism economy 7 thing I was talking about a few minutes ago. If 8 Ocean Gallery is, decides at some point it's no 9 longer a viable business because it's competing with 10 boom, boom, boom, all these artists who are 11 overhead-free. Ocean Gallery pulls out, the 12 landlord needs to find another spot. But if retail 13 is going unchecked on the Boardwalk or, you know, 14 sort of commerce on the Boardwalk, maybe those 15 businesses are harder to fill. Maybe the landlords 16 don't get the rents that they once did. And where 17 is the Town's tax base coming from? Well, many of 18 those Boardwalk properties are prime properties as 19 far as the tax assessments go. 20 So there is a compelling interest there 21 for the Town of Ocean City to watch those, to make</p> | <p style="text-align: right;">Page 73</p> <p>1 out there in a G-string but me up there on that pole 2 just wouldn't look pretty. 3 JOSEPH L. KRO-ART: Thank you, gentlemen. 4 CHAIRPERSON SHOCKLEY: Thank you. Vicki 5 Barrett. 6 VICKI BARRETT: Good evening. I'm Vicki 7 Barrett and I have for many years been associated 8 with OCDC and now we are a part -- the Boardwalk 9 Development Association is now a part of OCDC. Our 10 mission as the Boardwalk Development Association, 11 our mission is to encourage business on the 12 Boardwalk. And we are vigilant with our wonderful 13 people on the Boardwalk -- restaurateurs, hoteliers 14 and merchants. They have to jump very high with all 15 of the requirements and ordinances that the City 16 puts out about outdoor display, and that's a very 17 big part of Ocean City and the Boardwalk, and 18 allowing people to display their merchandise, 19 outdoor seating, having outdoor spaces for 20 hoteliers. And they are, the merchants are 21 following very stringent guidelines in order to be</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 able to use the space in front of their business, 2 and they are reviewed by the Boardwalk Development 3 Association or OCDC, excuse me, they are monitored 4 throughout the season to be sure that they are 5 following the guidelines that they created in terms 6 of how much space they can use and where things are 7 placed and the kind of merchandise that can be 8 outdoors.</p> <p>9 They are not allowed to do any sale 10 outside the interior of their building. They cannot 11 sell anything outside and collect money outside, 12 which is a City-wide ordinance, I believe. And that 13 in itself is a detriment to their business if they 14 have other people around them who are conducting 15 business outside.</p> <p>16 My interest, our interest in the 17 performers is that it is a great thing and has been 18 for so many years to have performers on the 19 Boardwalk. The other day I was reading Vanishing OC 20 and there were many pictures of wonderful performers 21 on the Boardwalk from Elvis who, you know, any</p> | <p style="text-align: right;">Page 76</p> <p>1 high rents. They are getting business licenses. 2 They have restricted space that they can use outside 3 their building. And their cost of doing business is 4 extremely high. And I agree with Mr. Kro-Art that 5 there could easily become a time when merchants 6 cannot afford to have a business on the Boardwalk 7 and we will really be in grave problems if we can't 8 fill the stores on the Boardwalk. And that's my 9 biggest concern for the merchants and they are the 10 ones that I speak for.</p> <p>11 I do feel that safety issues clearly from 12 all of our speakers tonight the safety issues for 13 the pedestrians, for the citizens, for the tourists, 14 for the performers should be our number one 15 priority. If you don't feel safe for whatever 16 reason because you're being accosted by a 17 performance that you don't care to see and the 18 safety issue of a hidden face, even though those are 19 really fun and exciting things that you see other 20 places like Disney and others, if you don't feel 21 safe there then it isn't worth doing. It isn't in</p> |
| <p style="text-align: right;">Page 75</p> <p>1 number of people who performed. In those days there 2 were some regulations, mostly for safety reasons. 3 But I think that the performers need to be a part of 4 Ocean City's experience. I'm not suggesting that in 5 any case should we not invite performers whether 6 they be poets or artists or performers or any form 7 of artist.</p> <p>8 My background is in the arts and I am a 9 great advocate for free speech and for artists. 10 However, it is causing a problem for the merchants 11 on the Boardwalk. One example of the problem is 12 that one merchant quoted me that he lost \$30,000 13 last year because of a particular form of 14 entertainment that was going on in front of his 15 business.</p> <p>16 A number of other people have had the same 17 experience, they're losing money, when you realize 18 that the artists are not paying anything to be 19 there. They have no responsibility to the City, or 20 to the government to pay taxes, et cetera, that is 21 visible anyway and yet the merchants are paying very</p> | <p style="text-align: right;">Page 77</p> <p>1 Ocean City's best interest to do that.</p> <p>2 I think the comparison between the 3 merchants and what they have to do in order to open 4 and close their businesses on a daily basis and what 5 the performers do in a somewhat random fashion is 6 unbalanced at this point. And I think that having 7 an opportunity to look at this as a group I think is 8 a great thing, that it will be helpful to Ocean City 9 to come up with some suggestions of ways that things 10 could work better and work together.</p> <p>11 I agree that having some kind of a 12 rotation of the artists so that they are not in the 13 same place every day, I have a business on the 14 Boardwalk and my guests sometimes say to me can you 15 do anything about getting rid of this drummer or 16 this whomever who is constantly playing the same 17 routines and the same repertoire, and in this 18 particular case not very well, you know. It's okay. 19 That's how one learns. And sometimes we get a very 20 young person who is just kind of trying out their 21 new skills out there and they're not really ready</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 for big time, and I consider the Boardwalk big time. 2 I think it would be helpful if we could in 3 some way have a, not a pecking order exactly but an 4 order of performers who really can give something to 5 the public. I'm not going to be the judge of that 6 on whether they are talented or not talented. 7 That's not my thing. But I do think that with the 8 number of performers that we're seeing now we are 9 overrun with performers in some cases, and I think 10 being able to rotate them and to check their 11 credentials, so to speak, talks to safety issues. 12 I think that some kind of registration is 13 really important, not that we have to do anything 14 with that registration but I think it needs to be 15 there for the city's safety and for the management. 16 And that's all I have. 17 CHAIRPERSON SHOCKLEY: Any questions? 18 MEMBER ROTHERMEL: Just so I'm clear, 19 where I thought you were going you were trying to 20 compare economics for the merchant to the First 21 Amendment and I'm not sure how that would float.</p> | <p style="text-align: right;">Page 80</p> <p>1 Just that fee alone is certainly more than what a 2 performer has to expend. And I am comparing the 3 expenses of all these incredible merchants who have 4 been here many years. And I'm not saying that the 5 merchants don't have free speech. That's not the 6 case. The question is where is the equity for the 7 merchant and if they're losing money they may not be 8 there is my concern. Any other questions? 9 MEMBER GERACHIS: And I think the second 10 part of your argument, which I think is pretty 11 clear, too, is that we also have to address the 12 stationary people like, you know, the Boardwalk's 13 moving constantly so these performers appear to be 14 performing to a moving crowd but we have to address 15 the stationary residential, you know, people like 16 who are staying at your place that probably don't 17 want to hear a bongo player for 16 hours. 18 VICKI BARRETT: Again, and there are 19 health issues with some of the performers. As one 20 of the merchants said, I'm standing 50 feet away 21 from someone who covers his face because of the</p> |
| <p style="text-align: right;">Page 79</p> <p>1 But then I felt you might be going towards your 2 position was more of like equal protection of the 3 laws for both parties. 4 VICKI BARRETT: We've spent a lot of 5 time -- the reason for the Boardwalk Development 6 Association as part of OCDC, the merchants 7 complained a lot many years ago about it not being a 8 level playing field for them, that there were, 9 people were not being held accountable for certain 10 standards. And so that was our job was to set up 11 standards for the outdoor display. And, you know, 12 it's been a rough road but I have a catalog of 13 photographs that show how much better the Boardwalk 14 looks these days, and people are following the 15 directions, following the routines. And the police 16 inspectors are very, Ray Schmidt and Blaine and the 17 other, Vickie, they are diligent about checking 18 things on the Boardwalk. 19 It seems unfair that they have to pay all 20 this money, they have to pay a fee to set up outdoor 21 display every year, it has to be renewed every year.</p> | <p style="text-align: right;">Page 81</p> <p>1 health issues of the materials he's using and 2 they're getting the fumes and the health issues as 3 stationary people. And that doesn't seem to be 4 being addressed. Anything else? 5 CHAIRPERSON SHOCKLEY: Thank you, Vicki. 6 VICKI BARRETT: Thank you. 7 CHAIRPERSON SHOCKLEY: If you guys don't 8 mind, we're done with everybody that we had called 9 tonight. If you give us a couple minutes to take a 10 break and look at the sign-in sheet and get that 11 ready to go, we'd appreciate it. So hang on for a 12 couple minutes and we'll get back to you guys. 13 (Discussion off the record.) 14 CHAIRPERSON SHOCKLEY: All right. Thanks 15 for your patience. In that first section there were 16 people that we wanted to hear from, and obviously we 17 want to hear from you guys. A lot's already been 18 said tonight so if you can keep your comments 19 pertinent and remind us of something that has been 20 said earlier, that's great. Anything new that you 21 can bring to this we would greatly appreciate. The</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 biggest thing is thank you guys for being here. 2 Thank you for taking your time to come out and 3 express your opinions. 4 We'll just go in order. Kitty Wyatt. 5 KITTY WYATT: Hi. 6 CHAIRPERSON SHOCKLEY: Hello. 7 KITTY WYATT: We are located at Dorchester 8 Street and Boardwalk. And I think if you take 9 everything he showed you the pictures and you 10 reverse it and put it on our side with the store, 11 it's kind of the same thing except we have two front 12 doors and a side door and that crowd literally 13 blocks everything of anybody, even people can't get 14 out of the store. 15 I have literally gone outside, and I've 16 had a couple really nice performers and I'm like can 17 you draw them in a little bit; they're kind of 18 blocking our doors. They've even came to me after 19 they're finished performing saying I'm really sorry. 20 We'll take care of it. 21 But a majority of them are absolutely</p> | <p style="text-align: right;">Page 84</p> <p>1 and said excuse me, what are you doing. I'm 2 performing. Not here you're not. You're like right 3 in front of the store. There was four people 4 performing. 5 I've sat inside the store and watched 6 across the street from where he showed you pictures 7 of the crowd and there's two or three there and they 8 get in arguments with each other because this 9 person's crowd comes in front of them and blocks 10 them from performing. So it's kind of a zoo out 11 there in some spots, especially Dorchester where it 12 is so wide. It's not like individual streets where 13 you only have this much, where you have the onramp, 14 the emergency onramp, I might add, and it's really 15 crazy on Dorchester. But it really takes away from, 16 I don't know about anybody else but you know that 17 side door was put there for people to be able to 18 come in from the sidewalk and down the Boardwalk to 19 see and walk in. I've walked up there and said 20 please, guys, can you like, and they looked at me 21 because I don't want to like take away from us if</p> |
| <p style="text-align: right;">Page 83</p> <p>1 positively like no, we have every right to be here. 2 But I'm like but you're blocking the doorways and 3 nobody can come in or out. And it's, you know, it's 4 taking business away from us. And they're like -- I 5 have pictures that, may she rest in peace, Kathy 6 Mathias told me to save that a lifeguard was trying, 7 a vehicle was trying to come in or I think come back 8 off the beach and the guy that used to be painted 9 with the flag was holding the flag and he asked him 10 to please move so they could get across and he's 11 like no. He put the flag right in his face. I have 12 pictures of all of it. And then the captain, I 13 believe, I don't know the ranks, he came again the 14 same issue, trying to get this guy just to move out 15 of his way to cross Dorchester. 16 So that's why I say, that crowd that you 17 saw those pictures I have crowds from the opposite 18 side that literally I walked out last year, we had 4 19 people from the trash can to two guys playing 20 instruments standing directly in front of our store 21 in front of the crab cage and I literally walked out</p> | <p style="text-align: right;">Page 85</p> <p>1 they decide to turn around and walk in the store and 2 shop. But yet nobody can even get inside the store. 3 So, I mean, like literally I, I've bugged them all 4 the time because I don't know any other avenue to go 5 except to call the police because nobody's listening 6 to me. 7 As far as performers, like I said, there's 8 a couple that were very kind. I have nowhere else 9 to go except to call the police. And do I want to 10 bother them? No. But I don't know what avenues to 11 take to say hey, come on, like let us -- we pay the 12 taxes here, we pay the rent, we pay our display fees 13 to have our -- you're covering half of our display 14 standing outside. 15 So who do we go to if not to them? But 16 it's not fair to keep bothering them. And the point 17 like they're in the middle of the summer, you're 18 just done, you're working so many hours, you're 19 spent. It's like where do the merchants go? Who do 20 they turn to in this situation to help us? 21 And we're kind of like, we're all kind of</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 spent over it. We really want -- I heard fairness 2 about street performers and merchants. Well, I see 3 fairness as we're the ones there having to pay rent 4 and when it takes away from us that we can't even 5 have customers walk in our store, or the crowd is so 6 big in a big semi-circle people literally walk 7 around them and just continue right on to like, you 8 know, two stores past us. They don't even get to 9 see -- one customer I've had oh, we couldn't find 10 you because -- oh, you couldn't find us because you 11 couldn't see our sign because it was blocked by the 12 crowd. And that's all we're asking for. And we 13 are, like I said, we're on Dorchester. It is a 14 circus out there. It's on this side and it's on 15 this side and you have two or three performers on 16 each side at any given hour, and they do come out 17 and they do bring their stuff and they sit it there. 18 One of the big ones is the guy that paints 19 himself gold on the bicycle, big crowd, like it 20 doesn't matter. Yeah, he does help the people move 21 out of the way when they're trying to cross with the</p> | <p style="text-align: right;">Page 88</p> <p>1 don't be afraid to actually approach other 2 performers. We do actually intermingle, we talk to 3 each other, and a lot of them if they have issues 4 they come to me. I'm kind of like the respected 5 father out there, as you would say. 6 KITTY WYATT: Well, they should be 7 respectful to the merchants. They should be 8 respectful to the merchants when they're blocking 9 our -- 10 MEMBER CHASE: They should be. 11 KITTY WYATT: When I come out there nicely 12 and I say please, can you kind of move the crowd 13 that way and they just look at me like who are you. 14 You're blocking business here. And that's where I 15 think there's an issue also. There's no working 16 together. They're like, there's a few and yes, I 17 said they've been very kind. But then there's some 18 that just totally look at us like why are you even 19 talking to me. 20 MEMBER CHASE: On that instance Lieutenant 21 Pacini would definitely be best.</p> |
| <p style="text-align: right;">Page 87</p> <p>1 lifeguard trucks or what have you. But again, I 2 mean, like he said, sometimes they need to go like 3 this and they can't. So I think it's, I've looked 4 across Candy Kitchen and go wow, look, whoever is 5 performing over there, which I don't even know why 6 they're over there, literally the crowd is all in 7 front of Candy Kitchen. People can't even get in 8 their door. 9 So it's pretty, it's a big mess out there 10 and we're just asking for help and some guidance of 11 what we can do when we need help out there. 12 CHAIRPERSON SHOCKLEY: Any questions? 13 MEMBER CHASE: As future guidance, a lot 14 of the street performers actually come to me. If 15 there are issues with just like a certain performer 16 feel free to come to me and I'll do what I can on 17 the performer-wise to help alleviate any of your 18 concerns and all that. I mean, Lieutenant Pacini 19 here has a lot on his plate, as you know, and the 20 more that store owners and performers we can work 21 together the less that he has to worry about. So</p> | <p style="text-align: right;">Page 89</p> <p>1 KITTY WYATT: Oh, yeah. Yeah. That's why 2 I say. But it's a daily thing. It's daily. And 3 it's got to stop because I don't need to be calling 4 them daily. It shouldn't happen like that every 5 day. We're there to pay our rent. We're there to 6 make -- we only have so many months to do it. And I 7 don't think I have to call them every day because, 8 you know, somebody out there decides like do you 9 know what, they have a free card there so they don't 10 have to follow any rules. We do. And we're -- we 11 should. Everybody should. So. 12 CHAIRPERSON SHOCKLEY: Anybody else? 13 Thank you. 14 KITTY WYATT: Thank you. 15 CHAIRPERSON SHOCKLEY: Yesim Karaman. 16 YESIM KARAMAN: Hi. I'm Yesim. I'm 17 representing my family who has the Golden Plate on 18 First Street. Mark and I actually share a corner. 19 I mean, I think all of us merchants kind of are on 20 the same deal, like we're upset because we do pay 21 rent and we do pay taxes and our taxes are spent</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 locally. I think our main goal, even with street 2 performers or merchants, is to pay our rent, to make 3 money and to be able to provide for our families. 4 And I think the more important goal is to maintain a 5 safe environment like Lieutenant Pacini touched on 6 and so many others have. But to keep the family 7 image of the Boardwalk as well. And I think this is 8 one of the reasons that the Task Force was created, 9 to assure that we have a safe Boardwalk and that we 10 maintain our family image. 11 I don't think there's anyone in here that 12 can say we don't think that the First Amendment is 13 valuable. I think we all agree that the First 14 Amendment is very valuable and you are acknowledging 15 and exercising your right. 16 One of my proposals, or one of the things 17 that I've talked about with other merchants is a 18 possible rotation schedule. And even though 19 sometimes I ask you to turn down your music and you 20 guys are super polite and do it so we can hear our 21 customers, many people don't. In the summer I've</p> | <p style="text-align: right;">Page 92</p> <p>1 make our rent and we are trying to provide for our 2 families, I know that Vicki touched on it and -- is 3 it Kitty? I'm sorry. Yes. That she touched on it 4 as well. Store fronts are being blocked there. It 5 is kind of a zoo out there. And I know just because 6 you and I share a corner, you've seen it, you're on 7 one side of the fire hydrant and there's not just 8 one performer on the other side of the fire hydrant. 9 There are two performers. And then there's one on 10 the west side of the Boardwalk as well. 11 Two summers ago there was an incident 12 where you were on the right side of the fire 13 hydrant, there was a mom and a daughter who were 14 doing hair wraps and I believe a henna tattoo 15 person. There were two paramedic calls to the beach 16 that day and the paramedics couldn't access the wood 17 ramp that goes all the way down to the beach. They 18 had to probably go 10 feet to the left over in front 19 of Boardwalk one to cut through an empty spot to 20 make like a U turn back to that ramp. And I mean I 21 don't have children but I think that's a very</p> |
| <p style="text-align: right;">Page 91</p> <p>1 gotten cussed out on nights that you're not there 2 where people say no, FU, screw you, we don't care, 3 your boss is a you know what. We're going to show 4 you after work. And I'm just like okay. All right. 5 Whatever. Go back to work. And they just get so 6 angry that they leave. 7 So I think a rotating schedule would be 8 great. Spray paint fumes do give me headaches. 9 That's a different thing. My mom has asthma. My 10 sister has been to the doctor for chronic headaches 11 all summer. 12 One of the ideas, if you guys would like 13 to do a rotating schedule, I think the Boardwalk or 14 like the new bathrooms that were built has a great 15 stage that's not utilized every day. I think maybe 16 that could be something worked into a rotational 17 schedule. I think it's a great arena that 18 performers could maybe utilize. I don't know if you 19 agree with that or if any of the other performers 20 agree with that. 21 Another thing is since we are trying to</p> | <p style="text-align: right;">Page 93</p> <p>1 important way to get to the beach and if people 2 can't get to the beach, if our paramedics can't 3 reach those people who are injured and not well at 4 that time, I think that's a huge safety issue. 5 So I think maybe limiting the number. I 6 don't know if that's even possible. I don't know 7 legally what the implications of that could be. But 8 limiting it to maybe one or two per street depending 9 on -- I don't know what you said, like the circle? 10 MEMBER CHASE: Yeah, you have two types. 11 Circle show and then you have chircle. 12 YESIM KARAMA: The circle show. If you 13 have more than one, if you have 2 or 3, sometimes we 14 even had 5, it's hindering safety for the public, 15 it's hindering business for us and it's hindering 16 business for you guys. And I know that many of the 17 performers say that it is them exercising their 18 First Amendment right but at the end of the day it 19 is still money and if it's blocking our business 20 it's also blocking your business. So. 21 CHAIRPERSON SHOCKLEY: Thank you. Any</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 questions? Thank you. Anthony Keiser. Gone? 2 Christine Lieb. 3 CHRISTINE LIEB: I thought you might like 4 to hear from somebody who is just a Boardwalker. 5 CHAIRPERSON SHOCKLEY: Okay. 6 CHRISTINE LIEB: And I probably walk the 7 boards about 280 to 300 days a year and so we've 8 seen a lot that goes down there. And I can tell you 9 right now that yes, businesses are losing money 10 because we love to eat at Shenanigan's but we have 11 often bypassed Shenanigan's because there is a 12 musician there -- and again, like they said, not a 13 very good one -- playing there and it was so 14 irritating that we decided let's eat somewhere else. 15 So I can tell you from personal experience that yes, 16 there are businesses that are losing money. 17 I have seen verbal, nasty verbal attacks 18 of one performer against another. One time we were 19 on the Boardwalk and there were these two young kids 20 on the Boardwalk, one was playing a banjo, one was 21 playing a guitar and they were phenomenal. But they</p> | <p style="text-align: right;">Page 96</p> <p>1 My husband and I as we walked we 2 occasionally, because the Boardwalk is so packed, 3 we've had to cross a performer's circle line and we 4 have been verbally abused by the performers because 5 we crossed their line. So I, just an every day 6 person who has gone on the Boardwalk quite a bit and 7 these are the experiences I'm having. 8 I don't mind some of the performers. I 9 think that's okay. But we just have a barrage of 10 them and it's just too much, and it's not a pleasant 11 experience anymore. 12 CHAIRPERSON SHOCKLEY: Thank you. 13 MEMBER CHASE: Thank you. 14 CHAIRPERSON SHOCKLEY: As someone who 15 listens to a lot of bagpipes, they're best listened 16 to from afar. 17 Arlo Hemphill. 18 ARLO HEMPHILL: Hi. My name is Arlo 19 Hemphill. I am a resident of Ocean City. I'm not a 20 Boardwalk merchant although I have family who do 21 have stores on the Boardwalk. I just wanted to say</p> |
| <p style="text-align: right;">Page 95</p> <p>1 had set up their thing near another violinist who 2 was God awful, and he lit into them because 3 everybody was going to them. Everybody was giving 4 them money. And he verbally, nastily verbally 5 abused those boys until they got up and they left. 6 So I've seen that as well. 7 Just the irritation from the cacophony of 8 noise that's on the Boardwalk as we're trying to 9 walk and just being barraged. I think the epitome 10 of one was the bagpipe player that came to the 11 Boardwalk. It's just too much, because you've got a 12 guitar player, you've got a bagpipe, you've got the 13 drums and they're not all that far away from one 14 another. So you get rid of one noise and you're 15 going right into another noise. And just as a 16 person just likes to walk the Boardwalk, it is so 17 irritating. And the crowds can be very irritating 18 when you're trying to get a power walk done and the 19 Boardwalk is completely blocked and there's no way 20 to get around it. You just have to try to inch your 21 way through the crowds.</p> | <p style="text-align: right;">Page 97</p> <p>1 just a couple observations I made. I really like 2 the idea of the rotating system, and it also sounds 3 like the performers are here to stay and there was a 4 failed attempt to kind of try to stop people from 5 having their First Amendment rights. It sounds 6 like, and what this one lady over here said about 7 like some of them being really good and maybe if 8 there was a way to rate them, that maybe the 9 emphasis should be rather than trying to take away 10 people's First Amendment rights actually identify 11 the really good acts, the acts that are benefiting 12 Ocean City, that are drawing crowds, and help them. 13 Provide them space. Provide them prime spots. And 14 really like highlight the acts that are like 15 bringing people to the Boardwalk rather than kind of 16 taking the negative approach of just trying to shut 17 the whole thing down. 18 I also wanted to just say that I've heard 19 a lot of talk about that, you know, way back in the 20 day or a few years ago one of the ideas was to 21 create Sunset Park as a place that these performers</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 could go and that was a kind of failed attempt. I 2 heard that one of the ideas was to kind of replicate 3 the idea of Mallory Square in Key West. I just 4 wanted to point out that when you're in Key West 5 you're headed to go see the sunset at Mallory Square 6 you're walking down Duvall Street past bars and 7 shops and stores the entire way. To go to Sunset 8 Park in Ocean City you're passing across two busy 9 highways, through vacant parking lots and a water 10 tower and there's nothing to see or do and I think 11 that really hinders the prospect of creating Sunset 12 Park as that area. And I think you, maybe we need 13 to think about redeveloping a downtown Main Street 14 feel so that there's a constant form of 15 entertainment between the Boardwalk and that area if 16 that is the idea to use that area for that purpose. 17 Thank you very much. 18 CHAIRPERSON SHOCKLEY: Thank you. Brian 19 McCarthy. 20 BRIAN MCCARTHY: Good evening. My name is 21 Brian McCarthy. I'm a resident of Ocean City. And</p> | <p style="text-align: right;">Page 100</p> <p>1 you know, letting a Baltimore judge dictate what 2 goes on on the Boardwalk is something that is, you 3 know, it's just not, you know, right. So if we have 4 to revisit it in the courtroom, then I'm all for 5 that. Thank you. 6 CHAIRPERSON SHOCKLEY: Thank you. Michael 7 Cantine. 8 MICHAEL CANTINE: Hello, everybody. My 9 anymore is Michael Cantine. I spent half of my 10 adult life working on this Boardwalk, living here in 11 Town. And I'm glad I came here tonight because I 12 saw some other, shed some light on other areas that 13 I didn't quite think about as much as maybe I should 14 have in terms of the police, what they have to deal 15 with, the lifeguards and so forth. But to be honest 16 my personal stake in this is that like you, Mark, I 17 don't know you by the way, I've never met you but I 18 have Fat Cats Airbrush on the Boardwalk, on First 19 Street, I, too, earn a living doing commercial art. 20 And me personally, you know, I have a lot of friends 21 that have shops and we talk a lot about it, and to</p> |
| <p style="text-align: right;">Page 99</p> <p>1 thank you for allowing everyone here a venue to 2 express our thoughts. Obviously, the proliferation 3 of performance has increased on the Boardwalk or 4 this Task Force would not have been formed. My wife 5 and I walk the Boardwalk every night and this year 6 was an absolute crescendo of dodging big crowds in 7 front of different performers. 8 Obviously, performers are a benefit to the 9 Boardwalk. They make it exciting. But I would -- 10 and it's just an observation that it looks like free 11 speech happens way more on the southern end of the 12 Boardwalk than it does on the northern end. And to 13 address that what has been brought up as far as the 14 rotating venue to get guys to move around so that 15 there is, you know, variety on the Boardwalk I would 16 just say that that's certainly a way to go. 17 But I also, my opinion is that both 18 businesses and the performers have to give a little 19 in order to get this solved this year. And if we 20 can't, then I personally don't think that the City 21 should shy away from going to court again because,</p> | <p style="text-align: right;">Page 101</p> <p>1 be honest I think that most of the guys that I talk 2 with, maybe 12 or 15 different people that we've had 3 this conversation with that all have shops on the 4 Boardwalk, it all boils down to money. Do you know 5 what I mean? 6 Honestly, everybody's agitated with the 7 fact that, you know, we pay the things we touched on 8 like, you know, we have insurance, we have rent and 9 so forth so that pretty much is what everybody's 10 stake is in it there. 11 Also, I have four employees that all 12 jumped ship as soon as it became free, and I can't 13 blame them because you guys, it's what we allow, you 14 know. I have airbrush tattoo guys, two of them 15 jumped. The character artist who does really, 16 really good out there, he's gone. And that's just 17 my main concern is like how far is it going to go? 18 And actually the big deal for me is the gray area. 19 How do we determine what is art and freedom of 20 speech and what's commercial art and what's retail. 21 You know?</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 Lee, I mean, you sell surf boards. If I 2 took a surf board and went out on the Boardwalk and 3 painted a beautiful thing on it somewhere by you, 4 you'd be -- 5 MEMBER GERACHIS: Surf Avenue next year. 6 No, no. 7 MICHAEL CANTINE: Right. Right. So this 8 gray area, forgive me for not knowing, and like I 9 said I'm glad I'm learning here because I really 10 want to learn, but again I need to know how the gray 11 areas, the laws, like with the jewelry and so forth, 12 how are we doing that? That's my question. Like 13 Lieutenant which does a heck of a job obviously, 14 he's spent a lot of time doing this, a lot of money 15 is being spent, everything's money, I'm just being 16 honest, this is me saying it, but he says there's a 17 green light when a guy wants to do jewelry. I don't 18 know. So how do we get that answer? 19 MEMBER ROTHERMEL: He didn't say there was 20 a green light. 21 MICHAEL CANTINE: No. I mean, like if</p> | <p style="text-align: right;">Page 104</p> <p>1 money because like -- I do. But that's the main 2 concern really is what's the gray area? I believe 3 we're not going to beat it. I believe, you know, 4 you do have a right to do what you do. I'm jealous. 5 No lie. Do you know what I mean? But like my guy, 6 I have my main guy, my main artist, been with me for 7 15, 20 years now. Every day, you know, he's grumpy, 8 he looks out there and he goes man, this sucks. 9 This sucks, man. I'm going to get a tank and put it 10 on my -- and grab a sack of T-shirts and he's going 11 to go compete with me. Do you know what I mean? 12 Where do you draw the line from art to retail? 13 That's all I want to know. How do we do that? 14 That's all I want to know. Help me with that and 15 I'll be happy. 16 CHAIRPERSON SHOCKLEY: There's a body of 17 case law that we have that we've also been provided 18 with ordinances from other towns and cities around 19 the country, and through the process of listening to 20 you guys and then us working with the case law and 21 the ordinances we hope to lessen the gray in that</p> |
| <p style="text-align: right;">Page 103</p> <p>1 he's not sure of somebody that's doing something, 2 how do we determine that? Where does that really 3 go? Do you know what I mean? Like the gray areas, 4 they are gray. Do you know what I mean? And what's 5 art? What's freedom of speech? You know? That's 6 where the concerns of me and at least my friends I'm 7 speaking with, we play poker, there's about 12 or 15 8 store owners, we get together, the topic comes up 9 all the time. And some people get really irritated. 10 You know? 11 I really think in terms of merchants, the 12 guys, you know, the people on the end, they do have 13 their boundary issues and things like that but I 14 think a lot of people are just irritated that it's 15 free and you can come to Ocean City, rope off a 16 piece of this beautiful Boardwalk that we all love 17 and claim it. And that's just, I'm speaking -- I 18 don't know how that came about. You know? I was 19 25 years old when I took on my store. 65 grand a 20 year then. It's 90 grand now a year. That's just 21 rent, you know. I don't even want to go about the</p> | <p style="text-align: right;">Page 105</p> <p>1 picture and make it -- 2 MICHAEL CANTINE: Do you all agree that 3 that's going to be really hard to make black/white? 4 CHAIRPERSON SHOCKLEY: I don't, I mean -- 5 it will never be black and white because it's always 6 subject to a higher, a court and a higher court's 7 and whoever sits behind that bench's 8 interpretations. But our goal is to make it clearer 9 to the merchants and to the artists and to 10 everybody, and it's something that's workable and to 11 move forward. And hopefully we're successful in 12 doing that. 13 MICHAEL CANTINE: Right. I wish you guys 14 a lot of luck because it's an issue. Obviously it's 15 an issue. We're here. But like I say, a lot of 16 these merchants, my buddies, you know, we've been 17 doing this thing for a long, long time and that's 18 just -- I mean, people can say all these other 19 things but everyone I talk to it's all about money. 20 So it's not fair, man, it's not fair. And that's 21 just the way it is. That's just what -- that's what</p> |

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| <p style="text-align: right;">Page 106</p> <p>1 -- right? Am I right? I don't know. But that's 2 all I have to say, you know. 3 CHAIRPERSON SHOCKLEY: Thank you. 4 MICHAEL CANTINE: I wish you guys a lot of 5 luck. It's going to be a challenge. 6 CHAIRPERSON SHOCKLEY: Thank you. Earl. 7 EARL CANTINE: How do I follow that one? 8 Well, I'm Earl Cantine. I've been on the Boardwalk 9 for 28 years now. I'm an artist and I have a store. 10 Basically what I'm going to say has already been 11 said, but I believe it can be broken down, there's 5 12 key points that I hope you guys will address and 13 work out. 14 First is, you know, to have a process, a 15 permit process, or a registration, at the very least 16 we need to know who it is, like he said, somebody 17 said, in the SpongeBob costume that's picking up a 18 child for a photograph. We should know the 19 identities. 20 The second point would be liability. I 21 mean, the Town absolutely has to be covered. You</p> | <p style="text-align: right;">Page 108</p> <p>1 I have a, you know, a business license and a sales 2 and tax use license and a state treasury's license. 3 You know? So hopefully we can learn to define that 4 a little better. 5 Last point, I hope we address this, is 6 fairness. A lot of towns have, not just to 7 merchants but to you guys also. It should be fair. 8 They should rotate them. A lot of towns have 9 lotteries, you know, where they draw the number and 10 you get that spot. That would be really good for 11 our Town because there's a lot of people getting 12 sick of the same performer grabbing that prime spot 13 on a first come first served basis. 14 Like I said, it's all been said before but 15 it's those five that I hope we address. Thanks. 16 CHAIRPERSON SHOCKLEY: Thanks, Earl. Anne 17 Marie. Anne Marie Conestabile. 18 ANNE MARIE CONESTABILE: Hello. My name 19 is Ann Marie Conestabile. I am a Director of the 20 J-1 program here in Ocean City. One of the largest 21 programs that we have is for United Work and Travel.</p> |
| <p style="text-align: right;">Page 107</p> <p>1 know? It's okay if a guy is on a unicycle, he's 2 juggling pins. But what if a bowling pin flies and 3 hits a baby? We already talked about this with the 4 spear. I don't know if you guys realize this but 5 henna, what's called henna on the Boardwalk is not 6 henna. Henna is brown. What they use is the black 7 stuff, it's a very dangerous chemical and it can 8 harm skin, especially babies. 9 Public safety. Those guys did a great job 10 illustrating it. You know, the Boardwalk's getting 11 blocked. The tram don't go through. Beach Patrol's 12 getting blocked. 13 My fourth point is definitely a 14 definition. That's, as Mike was just pointing out 15 there, it's going to be a hard one. But we 16 absolutely need a definition of what's performing 17 and what's retail. The First Amendment as far as I 18 know doesn't give you the right to swipe a credit 19 card on your iPhone and put up a sign that says how 20 much your product is and sell stuff. You know? I 21 mean, that's what I do but I have a store front and</p> | <p style="text-align: right;">Page 109</p> <p>1 And SpongeBob was mine, unfortunately. The reason 2 I'm here tonight is basically to shed some light on 3 the legality of the J-1 student performing. This 4 past year we had an incident where we had the need 5 to contact the Department of State. A sponsor for 6 the J-1 program is designated by the Department of 7 State which they have numerous rules and regulations 8 that we must abide by and numerous rules and 9 regulations that the students must abide by. 10 First of all, the student is here as an 11 exchange visitor, guest of the United States and he 12 is to be treated and to have the same freedoms that 13 an American would have for the three and a half, 14 four months that they are here. It's part of the 15 J-1 program rules and it gives them the opportunity 16 to come here to work, to travel, to experience the 17 culture just like you and I live and breathe it 18 every day. However, in the situation where they are 19 brought, you know, they're hired by a merchant, I'm 20 going to give you \$10 per hour for you to go and 21 dress up in the SpongeBob costume, come and see me</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 at the end of the day, I will pay you cash, you will 2 not have to pay taxes. This is easy money for you. 3 They are allured by the money, by the potential gain 4 of dollars that they have for the day. So the 5 students go for this. However, it is not legal for 6 them. 7 It is my job, if I bring the student, it 8 is my job to supervise, to vet every employer that 9 the student is working for no matter what merchant 10 on the Boardwalk, no matter what business in Ocean 11 City, I have to vet them and I have to make sure 12 that this employer has a license, a business 13 license, has workmen's compensation. There are 14 rules regarding the immersion of the student working 15 with Americans. So there's a lot of legal things 16 that I have to pay attention to when it comes to 17 placing the students. 18 I don't place them on the Boardwalk. They 19 go because they are allured by the merchants. So 20 what happens to the student is if I find out that it 21 is my student, which I pay very close attention to</p> | <p style="text-align: right;">Page 112</p> <p>1 will. I will give you my contact information. I 2 will work with the police if necessary. I will work 3 with the law if necessary. We are here to make sure 4 that our students stay safe, that they experience 5 our culture, that they experience positive culture, 6 and that we teach them about our culture. We don't 7 want to teach them about corruption, and this is 8 what they've learned on the Boardwalk thus far 9 working as entertainers. They learned that they can 10 hide behind the mask, they don't have to pay taxes, 11 they don't have to vet the employer, and they make a 12 lot of money. 13 I'll give you an example about SpongeBob. 14 SpongeBob was 4 years ago. He was one of my 15 students. I didn't know that he was working on the 16 Boardwalk until one day he came and he said to me I 17 made \$3,000 in one week. He says this is good 18 America. And I said to him how did you make \$3,000 19 and he said to me I actually had to split it with 20 the other guy. What was the other character? 21 Patrick. Yes, Patrick. But he says we made \$3,000</p> |
| <p style="text-align: right;">Page 111</p> <p>1 my students that are here, and I will go and I will 2 approach them and I've done it and I will continue 3 to do it, I am not the police, the police is 4 probably limited as to what they can do. I have the 5 right given to us by the Department of State to go 6 and take our students off the danger. They are 7 being exploited, so that's a dangerous situation. I 8 have to go and take them away from there. I've done 9 that this year, this past year I had some of my 10 Chinese students who decided to go on the Boardwalk 11 by Second Street and set up shop to do Chinese 12 lettering. And they took one of our ironing boards 13 from the apartments to set up the table. 14 So I had to go, literally had to go and 15 take them off the Boardwalk. And that's what I plan 16 to do again. The legality for the J-1 student is 17 that they are not legal to be hired for entertainers 18 and my job is to make sure that they don't do it. 19 So basically what I'm here in front of you 20 today is to give you the opportunity to ask me any 21 questions at any time outside this forum, if you</p> | <p style="text-align: right;">Page 113</p> <p>1 for the week. \$3,000 for an international student 2 is a year's income for their parents. 3 So my frustration, if you will, is that 4 our students are being exploited and at the same 5 time we want to keep them safe. We want to keep the 6 Boardwalk safe. Our kids have to be working for 7 real employers, real vetted people. And so please 8 feel free to contact me. I will leave my business 9 card. I will work with any of you. If you need to 10 have any further questions, I am designated by the 11 Department of State to do this. 12 CHAIRPERSON SHOCKLEY: Thank you. I have 13 a question for you. Any F-1s left around? 14 ANNE MARIE CONESTABILE: F-1s are not 15 legal to work in Ocean City. And this is a good 16 forum to make that announcement. They are not 17 allowed to work in anyplace outside their learning 18 institution. So if they're going to Minnesota to go 19 to school in Minnesota, they're only allowed a 20 20-hour permit to work within their campus, not in 21 Ocean City, not in New York City, not anywhere else.</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 However, these kids have Social Security cards and 2 they carry the cards and that's an allure for an 3 employer who sees a student. They can't 4 differentiate the difference between a J-1 and an 5 F-1 because a student is a student. But if you 6 investigate in their documents, if you ask to see 7 their DS form which is the legal authorization to 8 work, their visa, if you look at their documents it 9 will say not authorized for gainful employment. So 10 all those F-1s that you see in Ocean City, now 11 probably one or two out of the thousands that show 12 up here may have a card that will allow them because 13 they have proved to the government that they have 14 some kind of hardship, but the hardship cards in the 15 United States there's 25 given to the entire 16 country.</p> <p>17 CHAIRPERSON SHOCKLEY: And J-1 is allowed 18 1 job or 2 jobs? 19 ANNE MARIE CONESTABILE: J-1s, they're 20 allowed to work a second job. And the way the 21 government looks at it, it is for a second</p> | <p style="text-align: right;">Page 116</p> <p>1 were very afraid of the homeland security guys. We 2 actually set it up where, with some guys ahead of 3 time, to make sure that they weren't leaving the 4 Boardwalk by the time we got there and we caught a 5 couple rolling out. And that's when we cleaned up 6 that portion of the Boardwalk with respect to that.</p> <p>7 But it's a tough ballgame. We can't do it 8 as the Ocean City police. It's going to have to be 9 Anna Marie and the federal partners which I don't 10 know if they're going to come back to help us.</p> <p>11 ANNA MARIE CONESTABILE: I forgot to 12 mention if the students are caught by me or by 13 anyone, if they are caught doing this they actually, 14 immigration picks them up. They have 72 hours to 15 return home. And, you know, there's two sides to 16 that. One is okay, he broke the law, he broke the 17 rules, he can go home. But it's kind of unfair to 18 him for being allured in the first place, you know. 19 So it's unfair to all of us.</p> <p>20 CHAIRPERSON SHOCKLEY: Thanks for the 21 clarification. Randy Graham.</p> |
| <p style="text-align: right;">Page 115</p> <p>1 experience for them to gain while they are here for 2 the 16 weeks that they're allowed to work.</p> <p>3 CHAIRPERSON SHOCKLEY: Okay. Any more 4 questions? Thank you. Mark?</p> <p>5 LIEUTENANT PACINI: Can I just explain the 6 J-1 situation we had this year? As I said in my 7 testimony that, you know, we have to have a legal 8 right to stop somebody and I just can't go up to a 9 person who looks like a foreign student and identify 10 them. The reason I could do that this year is I 11 received information from a high level source that 12 said there's people on the Boardwalk running henna 13 stands that are being run by the businesses. So 14 what I did was I started at the south end and went 15 all the way north up the Boardwalk and was allowed 16 to, based on this complaint, identify everybody. 17 And during that process, you know, of the 11 or 12 18 henna tattoo stands that were up there 10 of them, 19 or 98 percent of them, were J-1 or F-1 students. 20 And then we got the Homeland Security guys involved. 21 They could do a little bit more. And the students</p> | <p style="text-align: right;">Page 117</p> <p>1 RANDY GRAHAM: Well, I am the lone 2 performer, I think, speaking here tonight. So I've 3 been in business most of my life up in Baltimore and 4 corporate president and raised 4 fabulous kids, I 5 got 2 grand kids and one on the way. We vacation in 6 Ocean City every single year with the kids and 7 walking the Boardwalk and having the balloon guy 8 make a hat for my little daughter and getting 9 pictures of it and throwing a tip bucket into some 10 violin guy's, you know, trying to make a living. 11 His bucket's usually empty anyway. That was all 12 part of the whole experience. And with all due 13 respect to the full-time residents here that walk 14 the Boardwalk every day because we like to do that, 15 too, Ocean City can't survive on full-time 16 residents. I think everybody knows that. It would 17 be dead.</p> <p>18 I've talked to so many people sitting out 19 there playing my guitar this year that have come 20 down from New York and New Jersey, they started 21 vacationing in Ocean City because it just got too</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 expensive to vacation up there. We didn't have 2 those people coming down here when we were 3 vacationing earlier. It was all Marylanders, 4 Pennsylvania and Virginia. And I'm thinking thank 5 God those people are coming down. I can't tell you 6 how many people that just stop by and sit with me, a 7 whole family, and just listen for a half hour and 8 then they'll get up and throw a buck or two in my 9 bucket.</p> <p>10 I think the thing that I learned most 11 sitting out there this year, and Greg saw me working 12 my way through a couple situations because I was on 13 4th Street several times, man, I'll tell you the 14 teenagers, there's hope. I will tell you. They 15 walk by and you can see they're listening and they 16 pass me and they'll get 20 paces past, they'll stop 17 and they'll reach in their little purses and take 18 out a quarter or the guys, they'll be 14 years old, 19 \$0.14 and they'll throw it in and they want to talk 20 and they want to hear another song. And I'll sit 21 there and talk with them a little while. People</p> | <p style="text-align: right;">Page 120</p> <p>1 probably not going to be out there much this year 2 because I'm booked all summer up and down Coastal 3 Highway. However, I will say that I think the 4 street performers have a value to the vacationers, 5 the folks coming here that are spending their 6 dollars in the retail establishments.</p> <p>7 Getting some level of it under control and 8 hearing everybody's side of the story tonight is 9 really very enlightening to me, even from the fire 10 and the safety position of it all. So I'm on board 11 with in any way or shape or form I can help Mark or 12 anybody on this staff in some way shape or form help 13 to get it under control, I offer my services up to 14 do that. So if anybody's got any questions for me, 15 I'd be happy, but that's all I have to say.</p> <p>16 CHAIRPERSON SHOCKLEY: Thank you. 17 RANDY GRAHAM: Okay. 18 CHAIRPERSON SHOCKLEY: Dan. Dan Torino. 19 DAN TORINO: It's all mostly been said. 20 I'm on North Division Street at Dimensions. I just 21 don't think it's safe at all to have performers</p> |
| <p style="text-align: right;">Page 119</p> <p>1 come down from the condo buildings and tell me they 2 listen to me every night.</p> <p>3 And then there's, I tell you, there's a 4 family came by, little Down Syndrome boy, Kevin. He 5 was just standing right next to me. And finally his 6 granddad said I think he wants to sing. And I said 7 come on over here, Kevin. I put the microphone 8 down. And he sang in some foreign language, like 9 his family didn't even -- no intelligible word 10 whatsoever. No one knew what he was singing boldly 11 and proudly. It was the biggest crowd I drew all 12 summer. I think it was 20 people or whatever. But 13 afterwards they were all giving him ones. And man, 14 he was just so proud and he took all those ones and 15 he put them in my tip bucket. My tip bucket. I 16 tried to give them back and his grandfather said no, 17 no, no, no. He wants you to have that.</p> <p>18 Those experiences took place all summer on 19 the Boardwalk. That family told me that was the 20 highlight of their vacation this year. 21 So only reason, the only thing, I'm</p> | <p style="text-align: right;">Page 121</p> <p>1 block the Boardwalk so your only option is to go on 2 the concrete path or the tram's coming through, 3 trying to get through the line at the bathroom. And 4 I watch it all day long. I sit out there all day 5 long. And it just doesn't make sense. I see the 6 tram honking. Kids are running out of the bathroom. 7 There's not enough room down there. And that's 8 every block. And I see people looking 3 blocks 9 ahead of the commotion. They're walking by every 10 store just to see if it's a fight or what's going 11 on.</p> <p>12 Then they finally get around because they 13 don't want to walk through the middle and be in the 14 spotlight, they walk around and then at the next 15 block they can't get back on the Boardwalk because 16 then there's another performer. So they just walk 17 on the concrete the whole time. That's not helping 18 any of us.</p> <p>19 I mean, somebody messed with your money, 20 you went to the Supreme Court. All of us here are 21 losing money. I don't know what the performers want</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 from us to think but a lot of people go to the 2 Boardwalk for the merchants, the restaurants, the 3 bars. I mean, our say should be important to try to 4 make it spaced out so it's not messing anybody up 5 because it doesn't make me money when I see the 6 backs of people's heads looking at the performers. 7 Then I go upstairs to my shop, I have a 8 second floor, and it smells like spray paint. I got 9 customers waiting to get pierced, you know, I paid 10 \$3,500 for a license to do everything sterile and 11 clean and my whole upstairs smells like spray paint. 12 There's got to be something we can figure out to not 13 have it. I mean, I see you up front of Dumsers and 14 I can't imagine that's good for their ice cream 15 business. 16 MEMBER CHASE: You mean Kohr Brothers. 17 Tuesday I'm either on First Street or it was most of 18 the time for the last couple years, or it was Talbot 19 Street right near where Fishers is. So it would 20 actually be Kohr Brothers rather than Dumsers. You 21 said you're at Dimensions in between North Division</p> | <p style="text-align: right;">Page 124</p> <p>1 money doing what I do right on the Boardwalk. 2 Where are we going to draw the line? 3 Everybody's going to hear about this. Next summer 4 there's going to be 10 more problems. Then it will 5 be -- I just don't know where it's going to go to. 6 Who is in charge to say who can do what? 7 MEMBER CHASE: That's why we're here. 8 That's why we're listening so we can help solve 9 these issues. 10 DAN TORINO: Is it the Boardwalk -- I 11 mean, is there any other spot that can be kind of 12 designated that's not really in the flow of traffic? 13 MEMBER CHASE: That was one of the main 14 issues is prior to my lawsuit most of the performers 15 that drew the large crowds were on North Division 16 and they pulled them off the Boardwalk. Now they've 17 lost that area and that's kind of why they're all 18 spread out now, especially the circle shows as we 19 call them. One of the main things that I think we 20 might address is the performers that draw the circle 21 shows, moving them to the east side of the</p> |
| <p style="text-align: right;">Page 123</p> <p>1 and -- 2 DAN TORINO: Right up by the bathroom, 3 yes. I have a lot of stuff going on there, so it's 4 really a congested block. I'm not trying to single 5 you out but the guy that was gold, no one wanted to 6 walk through that because he would follow people and 7 whistle at them and embarrass people. So people 8 would literally get off the Boardwalk and these are 9 people that -- I have people that call me and say I 10 couldn't find your shop. I walked by a million 11 times. But how can you miss my shop? Because 12 there's so much going on, you can't see anything. 13 That's the problem that everybody here is paying 14 rent and you're making money because we're drawing 15 people there. I mean, plenty of people exercise and 16 enjoy it but you can't make money without us there 17 and, you know, like I said you went to the extremes 18 to make sure that you can still make money and there 19 needs to be, taking the Square, if you swipe a 20 credit card on the Boardwalk that's just a business. 21 Can I pierce on the Boardwalk? I'll save a lot of</p> | <p style="text-align: right;">Page 125</p> <p>1 Boardwalk. That way it forces people back around 2 your stores rather than away from them. Does that 3 sound like a comprehensible thing for -- 4 DAN TORINO: Yeah. That seems like a 5 logical -- 6 YESIM KARAMAN: Do you mean the west side 7 of the Boardwalk? 8 MEMBER CHASE: Yes. Remove all the circle 9 shows from the west side and move them to the east 10 side. Away from businesses. 11 DAN TORINO: That's got to coordinate with 12 the tram, too. Because like I said, I hear the horn 13 honk 10 times. Every time it passes by it's just a 14 guy laying on the horn. Everybody's trying to move 15 away. But then there's the circle from all the 16 performers. I just don't see how that's safe at 17 all. 18 MEMBER CHASE: That comes down to 19 performer responsibility. He's responsible for 20 that. That's another thing that we're going to 21 address.</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 CHAIRPERSON SHOCKLEY: Dan, are you good? 2 DAN TORINO: I guess that's about it. 3 CHAIRPERSON SHOCKLEY: Thank you. We have 4 extinguished the list. Anybody else have anything? 5 Bruce? Bruce Leiner. 6 BRUCE LEINER: Good evening. Bruce 7 Leiner, Candy Kitchen. I wasn't really here to 8 speak about the economic stuff as much. I've been 9 here for 45 years now. Love the Town. I think a 10 lot of wise people spoke tonight and a lot of common 11 sense. 12 First recognition is the performers are 13 here to say. We all need to work together. And 14 they are generally a very positive asset. 15 Number one, we're a family town and safety 16 and family should come first. Along those lines 17 it's kind of my view there should never be any roped 18 areas, blocked off areas, blocking of entrances or 19 ramps, or any public access because that's how 20 people get hurt. And it's been clearly stated that 21 generally the performers will not have insurance.</p> | <p style="text-align: right;">Page 128</p> <p>1 not good. This is not safe. You guys got to move 2 it along. Some day that 50, 60, 70 people could be 3 a gang. Maybe you want to move them along, too. We 4 don't want that type of thing. 5 You just can't have where people can't get 6 in or out of a store, or any situation near any 7 public access ramp. 8 One simple analogy to that just in a 9 common sense is you go to a theater and that's a 10 great show, you might be dancing in your seat but 11 you're not really allowed to block the aisles, 12 you're not really allowed to block the exits. 13 Because what happens? Fire marshal walks in and 14 says sit down in your seats, be in a certain area or 15 we're going to close it down. 16 It would seem to me that hand in hand 17 would be the rotation of the lottery. It seems like 18 it's fair and necessary, and perhaps maybe a total 19 number of slots that the Town at any given year can 20 evaluate what they think they can physically handle 21 safely for the Town and still be fair for full</p> |
| <p style="text-align: right;">Page 127</p> <p>1 The City is the first one that gets sued. It's not 2 if, it's when it's going to happen and we'll be in 3 other types of lawsuits. So I think there's a way 4 to do it safely and fairly. 5 I think a minimum distance should be set 6 from any of these particular areas, like a fire 7 hydrant. Maybe you shouldn't be able to be sitting 8 on the fire hydrant during the day, especially if 9 you can't move your stuff within 15 seconds if the 10 fire guys are coming up. 11 I think what Mark said a few minutes ago 12 about perhaps having setup on the east side away 13 from businesses, none of the cities, you see them 14 across the sidewalk even if it's the sidewalk 15 artists, they don't get to block store fronts. Just 16 sheer common sense, if the fire marshal came down, 17 and the fire marshal has a lot of power in this 18 Town, if you can't get in or out of your store, 19 that's a fire hazard. Pure and simple. Back to the 20 black and white of what the officer wanted. He 21 should be able to walk up and assess whoa, this is</p> | <p style="text-align: right;">Page 129</p> <p>1 expression of public speech. 2 Businesses have said addresses. Not 3 street performers. Even ACLU has an office with a 4 street address. They don't practice on the street. 5 They may speak at the street. It could be anywhere 6 in the world. And I think the street performers can 7 do what they do throughout the Town and hopefully 8 some type of lottery system could be effectuated. 9 The last thought I have is just how do you 10 limit the size of it? Let's say someone wants to 11 come and they've got 50 people that want to perform? 12 I think you need a lottery in a sense because you 13 can designate a size slot, too. You want to be fair 14 and have some reasonable standard, and I'm not 15 trying to tell you what that is, but I don't think 16 it should be just whatever. 17 CHAIRPERSON SHOCKLEY: Thanks. Any 18 questions? Thank you, Bruce. 19 BRUCE LEINER: Thank you all. Tough job. 20 CHAIRPERSON SHOCKLEY: Thanks. Maybe one 21 more. We've been here two and a half hours. So</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 sir, state your name and -- if you didn't speak 2 tonight or you know somebody who would like to 3 speak, we have another meeting next week. Sir? 4 BILL CAMPION: There's some very good 5 points made tonight. I'm also one of the 6 performers. I've been performing since I was 7 12 years old. I started off as a ventriloquist, 8 added balloons, then professional clown, and then 9 finally magic and illusions but always for children. 10 When you work with children you better have an 11 immaculate record because it's very, very important 12 what goes on. And that's one of the reasons why I 13 think that any performer on the Boardwalk should not 14 cover his identity. We should be able to see who he 15 is. 16 So costumers, that's a business that 17 somebody is setting up. That's not for the 18 Boardwalk. That's for a theater. Something of that 19 nature. Or a festival, a special festival in 20 another area. Not the Boardwalk. 21 A performer is the one that entertains the</p> | <p style="text-align: right;">Page 132</p> <p>1 I don't make the hats because they blow away. We 2 don't want the balloons all over the place. We 3 don't want them out on the beach or even in the 4 water because the fish will eat them. And I explain 5 that all the time to the kids. 6 Our trouble on the Boardwalk started maybe 7 five, six years ago before Mark and the lawsuit. 8 Things started changing on that Boardwalk. We 9 didn't have a lot of people out there. I came in 10 right behind Boardwalk Elvis. He didn't actually 11 perform. He just walked. But I've seen so many 12 changes on this Boardwalk and it's not -- too many 13 performers, and you have an entirely different type 14 of crowd. Now the Boardwalk is splitting up. You 15 have one kind of crowd on the lower end. You have a 16 different type of crowd on the upper end. There are 17 some people don't even want to come down to the 18 lower end anymore. Things are changing out there. 19 You need to control how many you have out 20 there, and if you do I hope you consider us who have 21 been there for years, who have not caused any</p> |
| <p style="text-align: right;">Page 131</p> <p>1 people. I do balloons. That's all I can do 2 anymore. I'm 81 years old. And if I come out this 3 year it will probably be my last year on the 4 Boardwalk. But I learned, I used to have a line all 5 the time but I never blocked anything because the 6 adults were off to the side and the kids were in 7 line and they always stayed off to one side. They 8 were very, very cooperative. I controlled that. 9 And I made their balloons for them. Then I learned 10 you make them up in advance, put them on a bar. I 11 have to use a mobility cart because I can't stand 12 long enough. So I don't have lines anymore. And I 13 don't do anything to draw them in. I just sit 14 there. They want the balloons, they come in and get 15 them. 16 I have people come back every year, said 17 this is the highlight for my children your balloons 18 because you always have something new. You make 19 something different from everybody else. I make the 20 balloons they wear on the arm. If they wear them on 21 their arm they won't blow away, if they wear them.</p> | <p style="text-align: right;">Page 133</p> <p>1 problems, who have tried to work with the locale. I 2 came here in '73 as a locksmith. I was the original 3 locksmith in Ocean City and I did work for the 4 police department free of charge. I wanted to be 5 part of Ocean City. I wanted to be responsible, 6 kind of pay back. And I only charged them for the 7 material I bought for what I paid for it. That's 8 all I ever charged them. I did the same thing with 9 the churches. And I was involved in some of the 10 organization of the first Sunfest. And I did 11 demonstrations and I assisted the police department. 12 And I did that also on the Boardwalk with the police 13 department when they were looking for someone. And 14 I would call them on their cell phone if I saw 15 someone, I would follow at a discrete distance and 16 when they caught up with me I would describe the 17 person and then I'd go back to my spot and do my 18 thing. I try not to cause any problems. 19 This can work out. But a lottery system, 20 please consider the ones that have been on this 21 Boardwalk for years. The last council they had two</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 of the council members even spoke on my behalf and 2 said he's a good representative for Ocean City. 3 This is the kind of thing that we like. So please 4 consider some of those people that have been here 5 years and been performing in an honorable way. 6 Even now a lot of them will come up. I 7 set now in front of the restroom between the 8 arcades. And the reason I do that is I have a skin 9 problem in the sun and I try to stay in the shade 10 and the afternoon when the sun comes over I go over 11 on the other side of the Boardwalk. But I've had 12 other performers come up and say do you mind if I 13 perform over there. No. Go ahead. We're not in 14 any competition. Be my guest. Happy to have it. 15 I've had a couple of them come up along side of me, 16 say do you mind. No. It works out for both of us. 17 But we did cooperate amongst ourselves. 18 We're not seeing that so much today. And one of the 19 things you can do, there's two items I do want to 20 bring up, where they have the Boardwalk crossings 21 for the vehicles, you have I think two or three of</p> | <p style="text-align: right;">Page 136</p> <p>1 you'll have a big relief. So you can have maybe up 2 to three groups there say in the morning or earlier 3 part of the day and then in the evening they'd have 4 three other groups and three groups over here down 5 by Dumsers in that area. You've got several areas. 6 There's down there by, I can't remember the street 7 names now, I'm getting to the age now where I can't 8 pull half the stuff out of my head that I want but 9 they've got a lot of tables and everything else, 10 they're never full in there. If the businesses kept 11 toward their shops more and kept an open area in the 12 center you could put another performer in there. 13 And I'm sure that some of the offset from that will 14 go to the refreshment stands afterwards. But if you 15 put them in an area where they can perform and not 16 be a hindrance to the Boardwalk, it would be a big 17 help. 18 CHAIRPERSON SHOCKLEY: All right. Thank 19 you. I need your name, sir. 20 BILL CAMPION: William Campion. I do the 21 balloons as the Mad Hatter on the Boardwalk.</p> |
| <p style="text-align: right;">Page 135</p> <p>1 them. I think that area if you would take a red 2 line and draw plenty wide enough for a pickup, 3 nobody crosses that line that performs. You have to 4 stay on one side or the other. They're out of the 5 way. You only contend with the Boardwalk people. 6 And the little beep, beep, they're going to look and 7 see and they'll get out of your way. 8 The other thing is we have several areas 9 where performers who draw a crowd can perform and 10 not hinder the Boardwalk. One of them is right 11 where I'm at between the arcades themself. 12 Sometimes in the earlier part of the season they 13 take those six benches out of there and the 14 performers go in there and they perform and they 15 step back further as they get the crowd. And 16 they'll do their show. And then when they're 17 finished somebody else comes in and does a show and 18 that other one relaxes and there's two or three of 19 them and they take turns doing their show in this 20 area. If you designate that type of area for that 21 type of performance that draws crowds, I think</p> | <p style="text-align: right;">Page 137</p> <p>1 CHAIRPERSON SHOCKLEY: Thank you, sir. 2 BILL CAMPION: You're welcome, sir. I 3 think you're doing a great job and I wish you luck 4 because you got a tough one. 5 WARD KOVACS: I've bought balloons from 6 this gentleman, he's very gracious, for my niece and 7 all. But I just want it on the record beep beep and 8 lines are not going to do it for me. I tried it 9 before and that will not work. 10 CHAIRPERSON SHOCKLEY: Thanks, everybody. 11 We've got a lot of information tonight, a lot of 12 good ideas. You guys were civil which was great. 13 So I appreciate it. We go again next week. So if 14 you have any friends. Thank you. Motion to 15 adjourn? 16 MARK CHASE: I make a motion. 17 CHAIRPERSON SHOCKLEY: Second? 18 MEMBER ROTHERMEL: Second. 19 CHAIRPERSON SHOCKLEY: Thanks. 20 (Proceedings concluded -- 8:44 p.m.) 21</p> |

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CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a true and accurate transcript of the proceedings in the aforementioned matter.

Alfred A. Betz, Court Reporter

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OCEAN CITY, MARYLAND

RESOLUTION 2015-1

In re: Mayor and City Council of Ocean
City, Maryland Resolution 2015-1 entitled, "A
Resolution Establishing a Task Force to Study the
Issues Regarding Boardwalk Regulation."

HEARING

Wednesday, February 18, 2015

1:00 p.m.

City Hall, Ocean City, Maryland

Reported by:

Alfred A. Betz, Court Reporter

Page 2

1 PROCEEDINGS
2
3 CHAIRPERSON SHOCKLEY: Thank you,
4 everybody. Welcome. This is our second day of
5 hearing from the public and it will be our last
6 chance to hear from you guys today. We have people
7 we'd like to call. On the table there's a sign up
8 sheet. So if you want to sign up to speak in a
9 little while, please make sure you do that. We'll
10 get started in a second. We have some dates that we
11 need to go over. Hold on one second. Okay?
12 March 18th will be our next meeting. At
13 that point I'll be presenting my draft report.
14 MR. DEELEY: Sorry. The last meeting is
15 March 25. You will send to the Commissioners
16 informally your draft report on March 18th.
17 CHAIRPERSON SHOCKLEY: Okay. I'm sorry.
18 March 25th is the meeting. March 18th you guys will
19 receive my draft report. Obviously, March 25th
20 we'll have the meeting where we'll review the report
21 and vote on it. And then April 1st will be the

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1 final meeting and the final draft of my report will
2 be presented to you guys for a final approval. At
3 that point the procedure is as follows: The report
4 is filed, also if anybody has any more public
5 comment they'd like to make they can have it in by
6 April 1st. And if there's any dissent to the
7 Chairman's report it needs to be put in by April 1st
8 as well. At that point it's turned over to the
9 Mayor and City Council and they will proceed as they
10 see fit.
11 So that's our schedule for the next month,
12 6 weeks. So we'll get started again today with the
13 public testimony, and as of the first meeting
14 there's some people that we have selected that we'd
15 like to call and we will start with David Hartley
16 from the Fire Marshal's Office. If you'd come to
17 the table and have a seat.
18 DAVID HARTLEY: I have some hard copies if
19 I can approach and hand them to you.
20 CHAIRPERSON SHOCKLEY: Sure.
21 DAVID HARTLEY: My name is David Hartley.

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1 I'm the Fire Marshal for the Town of Ocean City. I
2 do appreciate the opportunity to come before the
3 task force and just share a couple concerns we've
4 had over the summers regarding some life safety and
5 fire protection safety.
6 Throughout the last two summers we've seen
7 the increase in the number of performers and in
8 seeing that we've also seen the specific use of
9 generators, gas powered generators. I'll speak to
10 that. And in addition to that we've also seen some
11 issues with them setting up around fire hydrants.
12 What I'd like to do, what I've handed to
13 you and put together is kind of more fine tuned in a
14 Code recommendation both for my office and also for
15 the police department. I know that they're looking
16 for more clear direction in terms of enforcement
17 should they need to do so. But I will tell you over
18 the last two summers when we've run into issues
19 where we've seen violations of possible fire hazards
20 we've communicated directly with the individuals
21 involved and they've all been very cooperative. I

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1 want to get to a point where we have this more in a
2 clear written rule or code where if we do have
3 someone who's not so cooperative we can maybe do
4 some enforcement action as well. But like I said,
5 this handout to you guys is from a life safety and
6 fire safety standpoint.
7 Because the majority of my job is more
8 about preventing these types of accidents, we don't
9 really have any, so much as history of an accident
10 on the Boardwalk but I want to prevent any future
11 ones. In particular, in talking about the
12 generators, those that are powered by gas, the
13 biggest concern I have is not so much the generator
14 itself. If you use a generator in accordance with
15 the manufacturer's recommendations they are in fact
16 safe. However, in a place that's so heavily
17 populated, dense with people, my concern is more
18 with their fueling and refueling.
19 Right now there's nothing on the books in
20 our life safety code or in our fire prevention code
21 that can prevent someone from actually refueling or

| | |
|--|---|
| <p style="text-align: right;">Page 6</p> <p>1 fueling the generator on the Boardwalk. That's at 2 the time when I think we're most vulnerable to an 3 accident. I'm not saying to prohibit the use of 4 generators. That's something more that you guys can 5 consider. But for me I want more safe handling of 6 the flammable liquid and the fuel and refueling. 7 So I put together just a few items that 8 I'd like to see put forth. One in particular is the 9 manufacturers specifically put out their 10 recommendations on how to use their equipment, and 11 if they do in accordance with their recommendations 12 they do, like I said earlier, I feel like they're 13 safe. 14 Generally speaking, it's 3 to 5 feet the 15 use of the generators away from combustible or 16 flammable liquids. That is something I'm 17 recommending to go into 5 feet because of the type 18 location with the products that they're displaying 19 and the confined space of the displays along with 20 the number of people that are around them. 21 Now, that might generate a problem for you</p> | <p style="text-align: right;">Page 8</p> <p>1 your recommendations. Do you have any questions on 2 the generators? I'd like to quickly just go through 3 our issues with the fire hydrants. 4 MEMBER CHASE: One thing to help you guys 5 out, would it be viable if the performer himself 6 actually kept a service log to make sure that it 7 stays up to fire codes and things like that? 8 DAVID HARTLEY: Absolutely. 9 MEMBER CHASE: I mean, just like DOT we 10 have to keep logs and things, I don't see why not a 11 performer couldn't keep a log on that. Right? 12 Would that help you out? 13 DAVID HARTLEY: That's a good suggestion. 14 Yes. 15 MEMBER ROTHERMEL: How would you define 16 areas that are immediately accessible to the public, 17 like item C page 2 under fueling or refueling not be 18 conducted on the Boardwalk? But almost everywhere 19 it's immediately accessible to the public. 20 DAVID HARTLEY: I struggled with that a 21 little bit. What I'm basically suggesting is</p> |
| <p style="text-align: right;">Page 7</p> <p>1 guys in that I don't know how much space these guys 2 are allowed to utilize in their footprint. So keep 3 that in mind as you go forward. 4 The next thing is we also covered the use 5 of the extension cords themselves. We want to make 6 sure that the voltage that's coming out of those 7 generators is being conducted through good extension 8 cords. They aren't frayed, damaged or what have you 9 and they aren't in the walking paths. 10 Additionally, I'd like to see that if they 11 are using these generators that are gas powered I'd 12 like to see them have a fire extinguisher in close 13 proximity. I think these are all reasonable 14 requests to have codified moving forward. 15 Just to go back just a little bit, the 16 other issue that we have is these generators do run 17 hot, especially the manifolds and the exhausts, and 18 I'm concerned about the public having access to 19 those and being burned one way or another. 20 So in summary, those, I believe there are 21 five items, that I would like to see go forward in</p> | <p style="text-align: right;">Page 9</p> <p>1 getting the generator off the Boardwalk to refuel it 2 and I would assume that you would find a location 3 that isn't being heavily traveled by the public, 4 whether it be somewhere to the side where you aren't 5 having foot traffic. One could say that that would 6 draw them into the beach or to the side street. So 7 it was a tough thing to narrow down. 8 MEMBER CHASE: I would say definitely no 9 refueling on the actual beach itself because then 10 you have to carry that canister across that 11 Boardwalk. From a footage rule would 50 to a 12 hundred feet off the Boardwalk be minimal? 13 DAVID HARTLEY: I don't know that you need 14 all that. 15 MEMBER CHASE: Because 50 feet would put 16 you about halfway down on the street end, and that 17 gets you away from the congregation of people. 18 DAVID HARTLEY: I'm more concerned about 19 the public that transverses by your refueling rather 20 than the distance from the Boardwalk, because there 21 could be just as busy of an area 50 feet away or a</p> |

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1 hundred feet away. I'd hate to sometimes push
2 common sense, you know, because I'm trying to refine
3 this a little bit to make it easier enforceable for
4 the police department who are our eyes and ears on
5 the Boardwalk.
6 MEMBER ROTHERMEL: How about size of a
7 generator?
8 DAVID HARTLEY: That's another tough one.
9 As they go up in size this is something that you
10 guys need to consider. The larger they get the
11 noisier they get. I know that when you do your
12 shows that we do have electricians do an inspection
13 on them. So that's something we may want to
14 consider in the future.
15 MEMBER CHASE: I would definitely say at
16 least like a weight limit and also a decibel rating
17 on the generator itself to help reduce the noise.
18 MEMBER GERACHIS: What about the
19 possibility of making them carry insurance if
20 they're going to use a generator?
21 DAVID HARTLEY: I would probably have to

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1 be UL listed, in good condition, and depending on
2 what you're powering all of those devices have
3 amperage uses. So you want to make sure your
4 extension cord can handle the amperage use.
5 MEMBER ROTHERMEL: And the fire hydrant
6 issue, 3 feet around the fire hydrant and as long as
7 there's a path at some point to get to that fire
8 hydrant is that what I'm reading here?
9 DAVID HARTLEY: Sure. Going into that
10 topic, I know working with Lieutenant Pacini over
11 the summers they really need clear direction from us
12 as to what we are looking for from the fire service.
13 And so I wrote, we do currently have a code about 36
14 inches around fire hydrant; however, I think we need
15 to be clearer on that in terms of we need a clear
16 path to it as well, not just be clear around 36
17 inches. But when the fire department needs to get
18 to it, we need to get to it and it needs to be
19 clear. In other words, I didn't want the fire
20 hydrant to be set up in the middle of a display.
21 That's what I was trying to avoid with the

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1 defer that to Guy. I'm specifically trying to
2 reduce the fire hazard and the life safety to the
3 public.
4 MEMBER CHASE: Is there any like certain
5 footage or so forth that performers should keep the
6 generator away from the public as it's being used?
7 DAVID HARTLEY: Yeah. I would say at
8 least 3 feet if not 5 feet.
9 MEMBER CHASE: So 5 would probably be a
10 lot better. Okay.
11 DAVID HARTLEY: That depends on the size
12 of the generator, too, because of the heat output.
13 MEMBER CHASE: Yes.
14 MEMBER ROTHERMEL: Nothing else.
15 MEMBER CHASE: I have one more. Extension
16 cord-wise, any certain recommendations, any certain
17 size amperage, things like that that performers can
18 actually look at and see this is acceptable, this is
19 not?
20 DAVID HARTLEY: Sure. Generally what we
21 look at when we do inspections is that they have to

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1 additional verbiage.
2 And once again, throughout the summer when
3 we've approached performers and those who put their
4 products on display, they've always cooperated with
5 us. So -- but then again, I'd like to put something
6 more in writing just in case we get that one
7 individual that doesn't.
8 Those are the two items I pretty much
9 wanted to focus on and recommend to you guys as you
10 guys go forward.
11 CHAIRPERSON SHOCKLEY: Any more
12 questions? Thank you.
13 DAVID HARTLEY: Thank you.
14 MR. AYRES: Can I have a copy of that?
15 DAVID HARTLEY: Sure.
16 CHAIRPERSON SHOCKLEY: Next up, Blaine
17 Smith.
18 BLAINE SMITH: Good morning. I'm
19 currently Assistant Planning Director but more so
20 I've been the Zoning Administrator for Ocean City
21 since 1985. I also worked here in 1969, '70 and '71

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1 as Assistant Zoning Administrator and Assistant
 2 Building Inspector. I say that because of my
 3 familiarity with the Boardwalk and the activity
 4 along the Boardwalk.

5 Zoning is a land use regulation on private
 6 property and what zoning does it regulates the use
 7 of private property in accord with the comprehensive
 8 plan. It is implementation of the plan. And I
 9 think to say that in relationship to the properties
 10 adjacent to the Boardwalk there were three various
 11 zones. 3rd Street South is B1 Boardwalk Commercial.
 12 It's been that way for many, many years. North of
 13 3rd Street to 12th Street is B-C-2. That zone was
 14 implemented in 1993 as a comprehensive update and
 15 made commercial. From 12th Street to 27th Street is
 16 R-3, General Residential District, which is from the
 17 inception it's been that way.

18 There are commercial properties in all
 19 three of those zones of different types some of
 20 which were grandfathered years past. When I came
 21 back to work for the city in 1985 we didn't have

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1 of merchandise south of 3rd Street on those
 2 properties down to the inlet. So we've been
 3 regulating the display of merchandise and activities
 4 such as henna tattoos, hair wraps, character art and
 5 things of that nature either by special permit up
 6 until 2009 where now it's permissive and it's
 7 prescriptive on what you can do.

8 In the prescription standard with outdoor
 9 display of merchandise and activity north of 3rd
 10 Street everything has to stay 10 feet back from the
 11 Boardwalk on to the private property. They cannot
 12 come closer than 10 feet to the Boardwalk. And part
 13 of the purpose of zoning is to remove congestion and
 14 for various purposes whether it's panic, emergency
 15 access and what have you for public life safety and
 16 welfare and property values as far as the use and
 17 its nature as a use to protect the things that we
 18 set out to do to maintain the comprehensive plan.

19 The Boardwalk and the beach are two
 20 primary assets in Ocean City, the beach being number
 21 1 and the Boardwalk being number 2, to promote

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1 that much concern, if you will, over outdoor display
 2 of merchandise in front of these commercial
 3 properties. Sometime between 1985 and 1990 there
 4 became a proliferation on private property of extra
 5 door display of merchandise. There was a provision
 6 in the code that caused, this is north of 3rd
 7 Street, that caused the businesses to go to the
 8 Board of Zoning Appeals and get an outdoor display
 9 permit for that display of merchandise and they
 10 would be granted a 3-year approval at that time.
 11 Later it was made a permissive use that as long as
 12 they complied with the standard. We found that the
 13 merchants were very competitive and they were not
 14 complying, so we went back to a 2-year review cycle
 15 with the Board of Zoning Appeals. And more
 16 recently, and this was 2009, the Mayor and Council
 17 passed a regulation that was prescriptive on how a
 18 display of merchandise would be in front of these
 19 businesses from 3rd Street to 27th Street.

20 A year or two later, in 2011, it was
 21 determined that we also had to regulate the display

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1 tourism in Ocean City. They are primary and there's
 2 a lot of value in how we do what we do to protect
 3 that investment for the tourists and the residents
 4 of Ocean City, and the businesses and the visitors.
 5 So we think those things that we do with these
 6 outdoor display permits or the prescription of those
 7 display permits on private property is to promote
 8 public health, safety and welfare.

9 There are limitations on the amount of
 10 display based on the square footage in front of the
 11 store. They get 30 percent basically of an area as
 12 long as we're 10 feet on to the property and they
 13 don't exceed that. They have to maintain ingress
 14 and egress, as the Fire Marshal said, for public
 15 safety. In some cases, and I'll use this tow away
 16 ground as an example, there's a fire lane in front
 17 of that building. That has to be protected, so we
 18 don't allow display to interfere with the
 19 accessibility of the merchants to access and things
 20 of that nature, whereas if you have fire hydrants on
 21 public property that he spoke of we also have many

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1 buildings that have Siamese connections which are
2 hydrants that go to the building for emergency
3 access for the sprinkler systems and what have you.
4 We have to safeguard them for accessibility so that
5 merchandise is limited in certain areas for public
6 purpose, and we believe that that purpose is served.
7 I think as far as congestion, the amount
8 of merchandise and the space of that merchandise
9 allows circulation around it and generally speaking
10 I believe we have maintained public safety on
11 private property whereas I have seen as I patrol the
12 Boardwalk a lot of these performers have spectators.
13 They become a spectator event. And I have seen
14 people have to walk around them, myself as well.
15 I've seen times where the train's coming, the
16 Boardwalk train, that there's congestion issues and
17 it's a matter of moving people around.
18 So I think as the Fire Marshal said that
19 we've seen this need grow and the reasonableness of
20 the need how we regulate or control it for a public
21 purpose that it has continued to grow to where it's

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1 become very noticeable. In my case as a regulator I
2 get a lot of concern from the business people
3 because it's competition. I don't interfere with
4 that. But I understand their statement. They're
5 being held to a standard and limited and they have
6 to pay permit fees to get that display, plus there
7 are limitations what they can display and how they
8 display whereas the Boardwalk performer isn't
9 subject to any of that and that's become an issue.
10 And when you look at the Boardwalk and the beach for
11 public purpose that it's creating issues that are
12 affecting those businesses adjacent to the
13 Boardwalk. The right and wrong of that, I can't
14 tell you, but I do know every year it's getting
15 worse because of the amount of competition, if you
16 want to call it that, or the number of performers.
17 And I know the Mayor and Council have moved the
18 performers to the street ends to try to get them
19 away from the businesses so they don't interfere,
20 but those are still concerns that they can show
21 their wares, if you will, and they're not subject to

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1 permits, license, rentals and things of that nature.
2 I see it and we know it's a public issue.
3 I'm here just to say that we're regulating
4 private property to the best of our ability within
5 reason, out of necessity, and it is enforceable by
6 the standard. I think as the Fire Marshal asked for
7 some standard so it is enforceable we need something
8 that will help, and I'll use the term make it a
9 level playing field for those people that are on the
10 private sector because it is competing whether you
11 call it freedom of speech or not. They are
12 merchandising, and I can't involve myself because I
13 only deal with private property, but we do see the
14 effects of it.
15 The pier building, as an example, was a
16 franchise agreement many, many years ago and there
17 was a provision in that pier franchise agreement
18 that as of a certain date they would have to move
19 the front wall, this is first floor level, they
20 would have to move the front wall back so many feet
21 to get rid of the bottleneck at Wicomico Street and

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1 the Boardwalk because it was so congested. And
2 we're seeing more and more congestion, not just at
3 the pier building these days but in other places.
4 Now, there was a time, if you go back, when I worked
5 here in the '60s and '70s people would walk up to
6 6th Street, turn and go back. They didn't go the
7 full length of the Boardwalk. That's not true
8 anymore. The whole length of that Boardwalk in the
9 peak of the night or whatever is congested and
10 there's reason to help safeguard the tourists and
11 the residents that utilize that Boardwalk. We're
12 trying to do our best on the private side to
13 maintain the activity on the private property but
14 that's as far as I can go. And I think mainly
15 that's why I came here. Even tonight we're having a
16 hearing to fine tune our display regulations so that
17 we can get better and better at maintaining the
18 quality of life on the Boardwalk and the integrity
19 of what's happening on the private sector.
20 CHAIRPERSON SHOCKLEY: Any questions for
21 Blaine?

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1 MEMBER ROTHERMEL: Blaine, you said that,
2 and correct me if I'm wrong, that zoning is to
3 regulate private property. In your experience as a
4 zoning officer is there any other community or
5 resort community that has their zoning laws, or do
6 the zoning laws impact public property? Maybe
7 that's a legal question, but.
8 BLAINE SMITH: Well, and I said that.
9 There is a zone in Ocean City where we do have a
10 zone on public property. It's called the Beach
11 Reserve District which is strictly under the control
12 of the Mayor & City Council in that district, just
13 like the Mayor & City Council are also in control of
14 the Pier Franchise Agreement. So it is in our
15 zoning code the Beach Reserve District and it does
16 specify certain things that are allowed with the
17 concurrence of the Mayor and Council. It's a little
18 different zoning enforcement than it would be if it
19 were a private property. It's at the discretion of
20 the Mayor and Council. You've got the Beach
21 Franchise agreements, you've got the scope of things

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1 that they do. So they allow certain activity
2 because it's under their discretion to do that under
3 that Beach Reserve District and probably some other
4 resolutions of the Mayor and Council.
5 I don't know of other jurisdictions that
6 regulate public property. It's normally under local
7 law that it would take place normally. We have
8 overlay districts that sort of downtown, upper
9 downtown regulation that sort of overlap public
10 properties to some degree. But that's a little bit
11 different. It's a procedure and process, not so
12 much regulation. It's still subject to the
13 ownership of that. I think Guy will tell you the
14 Mayor and Council themselves are sovereign whereas
15 OCDC is a corporation of sort. It's not a public
16 entity.
17 MEMBER ROTHERMEL: Thank you.
18 MEMBER CHASE: Do you think that possibly
19 you're overregulating, overregulating the actual
20 businesses to the point that it hampers any kind of
21 speech that they want outdoors on their own private

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1 property?
2 BLAINE SMITH: There are probably certain
3 aspects of the prescriptive standard that might go
4 that far, in your opinion. The outdoor display is
5 permissive with a permit and it's a license, and if
6 they accept that license under the terms of that
7 license with the prescription of it, it's done, I
8 don't want to say voluntarily but it's done as a
9 contractual agreement with the city when they issue
10 that license. Whether they have overregulated it or
11 not, it would be someone else's decision. I have to
12 enforce it as adopted. But I will say everything
13 that's in the prescription of that outdoor display
14 is for legitimate public purpose, to safeguard the
15 tourists and the families that come here. It's done
16 for that reason and no other reason, and it was done
17 with fairness and reasonableness so that all
18 properties could enjoy it to the same rate. In
19 fact, the hearing tonight is to make one size fits
20 all, if you will, so everybody has an equal
21 opportunity display in the same manner. But it is

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1 based on percentage of area and based on their area
2 they get the same level percentage with the same
3 rights. So I think it's fair. Whether you call it
4 overregulation or not, it would probably take a
5 decision of someone else. I have to regulate it as
6 adopted, and I believe it was done for legitimate
7 public purpose and I think it has done well to
8 protect Ocean City, the integrity of the Boardwalk
9 by having these regulations.
10 CHAIRPERSON SHOCKLEY: Anything else?
11 BLAINE SMITH: No, that was it.
12 CHAIRPERSON SHOCKLEY: Thank you, Blaine.
13 Todd?
14 TODD FERRANTE: Good afternoon. Thanks
15 for the time, allowing me to come and speak before
16 you today. I have a business on the Boardwalk. My
17 name is Todd Ferrante. I have a business located
18 between 2nd and 3rd Street. It's called Park Place
19 Jewelers, for those of you who don't know me.
20 Today I want to talk about what I foresee
21 happening in the street performing area. I've been

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1 up and down the Boardwalk during the summertime
2 quite a bit. I travel the Boardwalk quite often,
3 not only in the summer but in the off season. And
4 during the last couple years I've seen the
5 popularity of the busking grow. There's been quite
6 a few additions this year that I didn't see last
7 year, and I'm sure that that will continue to
8 happen. But what I would like to see in that is
9 some type of equity not only to the street
10 performers but to the people who vacation and visit
11 here.
12 We've got a lot of people congested and
13 moved into one area of the Boardwalk, most of the
14 street performers want to be in the downtown area so
15 they're all locked into the downtown area because
16 that's where the busiest area is. And of course
17 that's where the area becomes most congested. So I
18 would like to see, you know, the apparent
19 organization of giving them certain times, for lack
20 of a better word, maybe a lottery system which I
21 think has been brought up before to rotate the

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1 street performers.
2 The last time I checked we have a
3 Boardwalk that's 28 blocks long but everybody's
4 congested and fit into one area. So what I would
5 like to see the opportunity is to rotate locations
6 so that everybody has an equal opportunity to be in
7 a certain location. Okay? And a certain time. And
8 I think that that's something that we can come up
9 with and that would alleviate a lot of congestion
10 down in the Boardwalk in the downtown area. And it
11 will also give each performer opportunities to have
12 certain locations throughout the Boardwalk in Ocean
13 City.
14 And then the other thing I wanted to
15 discuss was the amount of space that each street
16 performer takes. Some take a 30 by 30 space and
17 some take a 5 by 5 space. So it would seem to me
18 that every street performer could live within a
19 certain amount of space and that way not to take up
20 an enormity of space which makes it impassable for
21 people who are vacationing or visiting or live here

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1 to walk along the Boardwalk. Because some of these
2 spaces are sort of locked in and they become
3 permanent spaces and it doesn't enable people to
4 utilize that space. Once they capture that space,
5 it becomes theirs and they've locked it in.
6 So I'd like to see us look at a certain,
7 some type of size and space that's equitable for
8 everyone that can be given and not to restrict,
9 obviously, what they're doing but the opportunity to
10 give a fair and equitable space to everybody. I'm
11 not talking about the space that people crowd around
12 them. I'm talking about the actual performing
13 space. And really that's all I have.
14 CHAIRPERSON SHOCKLEY: Any questions for
15 Todd? Thanks, Todd. Jackie Ball.
16 JACKIE BALL: My name is Jackie Ball,
17 owner of Conner's Beach Cafe, located at 207
18 Atlantic Avenue. That's between 2nd and 3rd Street
19 on the Boardwalk.
20 As a business owner on the Boardwalk for
21 more than 25 years my main concern is for the safety

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1 of visitors to the Boardwalk. In order to ensure
2 safety I believe that all performers should be
3 required to apply for a permit with the city and
4 should have to provide proof of identification with
5 a recent photo on a driver's license or passport.
6 This would be displayed on the performer.
7 Why should we wait for a tragedy to occur
8 before we require this? We've already had an
9 incident with a costume performer and a child. Any
10 pedophile or criminal can perform without any
11 screening at this point.
12 A performer or his equipment should not
13 block or obstruct free and safe movement of
14 pedestrians. If too many people gather for a
15 performance, a police officer should have the right
16 to clear a way to ensure the safety of all people
17 passing by.
18 No performer should utilize a public bench
19 or prevent the public from using one. I've had
20 musicians sit on benches across from my business for
21 long periods of time. And this may not be permitted

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| <p style="text-align: right;">Page 30</p> <p>1 at this time now but when we have called the police 2 in the past I think there has been some confusion, 3 some of maybe the young cadets didn't know what to 4 do and so they wouldn't ask them to leave and they 5 would just continue sitting there. 6 Performers should rotate so that all have 7 an opportunity to occupy the more desirable 8 locations. Also, this gives businesses who are near 9 performers that draw a crowd the chance to have a 10 break from it. One idea for rotation is to have a 11 monthly schedule done in advance. This way the 12 performers have an opportunity to let people know 13 where they will be. 14 Performers should be required to have 15 insurance. Who is held liable if someone is injured 16 by one of the performers? As a business owner I 17 have to have all the necessary insurance to cover 18 myself. Workmen's comp if employees are injured. 19 Liability and fire if something happens at my place 20 of business. There is insurance currently available 21 to performers for a reasonable amount of money,</p> | <p style="text-align: right;">Page 32</p> <p>1 they took photos and did not give them money. If it 2 is required, then it becomes a fee. 3 No performer should have equipment or 4 material that cannot be moved in less than 5 3 minutes. This might just be a rule of thumb so 6 that performers can truly grab a few things and 7 move. 8 Entertainment should be appropriate for 9 all ages and walks of life. I should not feel 10 uncomfortable to walk on the Boardwalk with my 11 children. The pole dancing which occurred one block 12 away from my restaurant is unacceptable. She is a 13 stripper and I have a photo of her driving her bike 14 along Coastal Highway advertising escort services. 15 If the businesses cannot have obscene or vulgar 16 T-shirts displayed how can this be permitted? 17 The Boardwalk is one of the main 18 attractions in Ocean City. We don't want to wait 19 for a tragedy to happen before we do something. We 20 must do everything in our power to make sure it is a 21 safe and family friendly place to visit.</p> |
| <p style="text-align: right;">Page 31</p> <p>1 about \$200 per year, which would at least mean the 2 city is not the only responsible party if something 3 happens from the actions of a performer. 4 As a citizen and business owner, I also 5 have a constitutional right to freedom from the 6 public nuisance of loud and unnecessary noise. The 7 amplification of music and the proximity of 8 Boardwalk hotels and apartments can be a real 9 problem. I had a performer dressed as Bart Simpson 10 playing the accordion every night for an entire 11 summer across from our restaurant. This currently 12 could not happen now but I do know, I sympathize 13 with the businesses who are subjected to this all 14 summer. 15 Our music on the deck was drowned out from 16 this. The hotel guests frequently called the front 17 desk to complain because they could not sit on their 18 balcony because the music was so unpleasant. 19 The money the performers receive should be 20 done so voluntarily and not aggressively pursued. I 21 have witnessed characters yelling at parents when</p> | <p style="text-align: right;">Page 33</p> <p>1 I feel that we can establish guidelines 2 which protect the rights of the Boardwalk 3 businesses, the tourists and the performers. 4 CHAIRPERSON SHOCKLEY: Thanks. Any 5 questions? 6 MEMBER CHASE: One. Was the accordion 7 plugged into an amplifier or was it without 8 amplification? 9 JACKIE BALL: It wasn't amplified, no. 10 But it was -- 11 MEMBER CHASE: It was still loud. 12 JACKIE BALL: It was very loud. You could 13 not hear our music. 14 CHAIRPERSON SHOCKLEY: Anything else? 15 Thanks, Jackie. 16 JACKIE BALL: Okay. 17 CHAIRPERSON SHOCKLEY: Bruce Krasner. 18 BRUCE KRASNER: Good afternoon. My name 19 is Bruce Krasner. I operate five retail locations 20 on the Boardwalk ranging from Wicomico Street to 9th 21 Street. I have been on the Boardwalk since the</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 summer of 1977. So every summer from then on I have 2 worked and made my living on the Boardwalk. And I 3 have seen the Boardwalk grow in ways that none of us 4 here could have imagined.</p> <p>5 In the last few years we've done things 6 like build a separate lane for the tram. Now I see 7 that that lane -- well, excuse me. The Boardwalk is 8 now being inundated with street performers. While 9 everyone here is of the opinion of working together 10 with the street performers to co-exist on the 11 Boardwalk, I am of the opinion that we should be 12 able to make a separate area where those Boardwalk 13 performers, buskers, whatever you want to call it, 14 can regulate themselves and do their business in a 15 certain area.</p> <p>16 When I went to the meeting with the city 17 attorneys I suggested some places like a spot at the 18 inlet along side the pier. I've also suggested 19 places like the Boardwalk on the bay side. With all 20 that being said, I am a proponent of freedom of 21 speech. I just don't believe that that's exactly</p> | <p style="text-align: right;">Page 36</p> <p>1 I have an issue with Mr. Chase, not a big 2 issue, but you wear a mask when you sit and do your 3 paintings but you don't offer masks for anybody 4 around you. Have you ever tried to give one to 5 somebody? Because obviously you're concerned about 6 the fumes because you are wearing -- what's it 7 called?</p> <p>8 MEMBER CHASE: It's called a respirator. 9 BRUCE KRASNER: A respirator, yes. So 10 what about everyone else around you? And with the 11 current issue on the Boardwalk where we're banning 12 smoking yet we're still going to be having a spray 13 painter on the Boardwalk. Again, safety issues.</p> <p>14 I believe that the guys who are wearing 15 the costumes, masks, they should be vetted. They 16 need to have background checks. We had an issue, as 17 Jackie had said before, with a costume guy, a 18 performer was molesting children or touching 19 children. People need to be licensed. They need to 20 be insured. And they need to be bonded. If we 21 can't regulate these people like this, then what</p> |
| <p style="text-align: right;">Page 35</p> <p>1 what's happening here right now because if it wasn't 2 for the buskers earning a living on the Boardwalk 3 and taking money or actually asking for money and 4 demanding it in certain respects I don't think any 5 of them would be there.</p> <p>6 I have been researching buskers on the 7 Internet for the last couple of weeks and I have 8 made a copy of performing rules and regulations that 9 I'll submit to you. This is from -- I've forgotten. 10 This one was from Santa Cruz or where this was from. 11 But if we are going to go this route, and I don't 12 want to keep going over some of the things that 13 other people have already said, I think that 14 regulation is going to have to be in place.</p> <p>15 When the Fire Marshal was talking about a 16 generator, I'm of the belief that there shouldn't be 17 a gas generator. Why does it have to be that way? 18 I don't know if that impedes on somebody's freedom 19 of speech. If you want to sit down and play a 20 guitar, by all means, play your guitar. What's the 21 generator for?</p> | <p style="text-align: right;">Page 37</p> <p>1 good are we as a municipality when something goes 2 wrong and then everybody points to each other and 3 say how come we didn't think about this then.</p> <p>4 I mentioned to you about the trams. I've 5 seen trams come to a complete stop because of the 6 lines in front. I am also on the BDA which is now a 7 member of OCDC. One of the founding members of 8 keeping the Boardwalk or trying to make the 9 Boardwalk a more pleasant place, a nicer looking 10 place, making sure the regulations are followed as 11 far as merchandise outside. And yet when I see what 12 we're restricted to do and then what other people 13 can just set up in a 10 by 10, 10 by 20 area, not 14 pay any fees, not pay any licensings, I think that's 15 a -- a crock I'll call it.</p> <p>16 What else? I got lots of things. I think 17 the space should be maximized at a 5 by 5. Anybody 18 who can't operate in a 5 by 5, do you know what? 19 We're doing our best to co-exist with you. Let's 20 get along. Let's do this.</p> <p>21 I also believe that they should be</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 moved -- some of these things that I've read on-line 2 every hour each of the performers are moved to 3 another area, a rotating section which I think is 4 also good if there are too many crowds in one space 5 or if it's blocking or causing a nuisance to a 6 business.</p> <p>7 One of the things I've come across with 8 the co-existence of street performers and businesses 9 is if a business had a problem with a street 10 performer all they needed to do was say something 11 and the street performer would just move along. I 12 don't know how true that is but I read it in a lot 13 of things on-line.</p> <p>14 I like the lottery system. I think that 15 should be implemented if in fact this does happen. 16 I had seen a picture of a, I think it was the guy 17 playing the violin, he was sitting right on top of 18 the fire hydrant. Used to be in the fire company, 19 and we as store owners need to follow certain 20 regulations as the Fire Marshal has said, as Blaine 21 the zoning administrator has said, but it doesn't</p> | <p style="text-align: right;">Page 40</p> <p>1 safety issue.</p> <p>2 In Santa Monica I talked to the lawyers, 3 too, even they've been sued because of the henna 4 skin reaction and city sued and I think they won. 5 Since 2001 Santa Barbara doesn't let anybody do 6 henna tattoo.</p> <p>7 I just want to confirm I was over there 8 week ago, 10 days ago in Los Angeles and Santa 9 Monica. I applied both of them, hair wrap and 10 henna. I just told them I want to do the hair wrap 11 and henna tattoo. They said strictly no. I cannot 12 touch people's skin. And we cannot do the massage, 13 all the people doing the massage to people. They 14 don't let you to touch anybody's skin.</p> <p>15 I went to Las Vegas. I tried to do same 16 thing. They said again hair wrap and henna tattoos, 17 they don't let you do it. And other things in Los 18 Angeles Venice Beach is 3 times longer than our 19 Boardwalk. They do lottery system. Everybody has 20 an 8 by 8 space and nobody can get the same space 21 every week. You have to go to the lottery and with</p> |
| <p style="text-align: right;">Page 39</p> <p>1 seem to work the same with the performers on the 2 Boardwalk.</p> <p>3 Just a few more things. No, I think I'm 4 good.</p> <p>5 CHAIRPERSON SHOCKLEY: Any questions for 6 Bruce? Thank you, Bruce. Shannon Tippet here? No 7 Shannon. Okay. Yadigar Karsli.</p> <p>8 YADIGAR KARSLI: Hi. My name is Yadigar 9 Karsli. I have a store on the 1st Street Boardwalk, 10 Love's Lemonade. I came to Ocean City 2000. Before 11 2000 I was a street performer like Chase. I was 12 doing the henna tattoos and my wife was doing hair 13 wrap, spray paint in Venice Beach, Los Angeles, 14 Santa Monica, Los Angeles again. And I never seen 15 like a freedom street performers have like in Ocean 16 City. There's no rule at all here.</p> <p>17 For example, in Los Angeles nobody can do 18 right now in Venice Beach, that's the most popular 19 place in America for street performers, nobody left 20 to do henna tattoo and hair wrap. They don't like 21 you to touch people's skin and hair. It was a</p> | <p style="text-align: right;">Page 41</p> <p>1 the random choose your places.</p> <p>2 Nobody can do the gas generators and 3 battery lighting because of safety issue.</p> <p>4 And all of these things I see here in 5 Ocean City they can do whatever they want. They can 6 space as much as you want. Everybody can come to 7 same space every week.</p> <p>8 Then I talk to people, even I went to the 9 health department, I called the food and drug 10 administration, they don't want to involve anything. 11 If they don't want to involve something like that, 12 city told me, city can make their own rule for the 13 safety of their people. And they said we don't let 14 anybody do the hair wrap and hair dye, hair touching 15 because we don't know what they are using and we 16 don't know who is doing it. They stop it.</p> <p>17 And why Ocean City has so much freedom? I 18 don't understand it. That's it.</p> <p>19 CHAIRPERSON SHOCKLEY: Thanks. Any 20 questions?</p> <p>21 MEMBER ROTHERMEL: Thank you very much.</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 CHAIRPERSON SHOCKLEY: Okay. We've got a 2 couple people who signed in. Jim Starck. 3 JIM STARCK: Good afternoon. My name is 4 Jim Starck. I have been performing on the Boardwalk 5 for 25 years, in this area for 35. I've done all 6 different types of employments here. But who got me 7 on the Boardwalk was a lovely lady by the name of 8 Sunshine the Clown, and back then 25 years ago we 9 had to go and apply for a permit. And I miss that 10 permit today. 11 But once again Ocean City does have way 12 too many costume characters. Spongebob, Patrick, 13 Mickey, Minnie and some of them are licensed by the 14 Disney people so I'd hate to have them come up and 15 give everybody a fit or two, you know, about that. 16 And there are students paid by one of the 17 shopkeepers 7 to \$8 an hour. I don't know what to 18 say but in my life this is not entertaining. 19 What I have here is private costume 20 characters. Captain Jack Sparrow, Bony Pirate. 21 Costumes are good. Private handmade original</p> | <p style="text-align: right;">Page 44</p> <p>1 It is not from India. It is just hair dye applied 2 on the skin. 3 Let me see here. Painters. Spray 4 painter, Mark Chase. Spray painter, Bird. Tropical 5 sign painter. Caricature artists or portrait 6 artists. These artists are entertainments. 7 Palmists. Or palm and tarot readers. One Indian 8 fortune teller. People need to know their futures. 9 Who doesn't? 10 Permits of licenses should be reissued at 11 a hundred dollars per. Or sign in at City Hall so 12 that you may perform on the Boardwalk. I know the 13 shopkeepers and the Boardwalk pay a lot for their 14 store fronts. A hundred to \$200,000 or more. Plus 15 they have to pay licensing, electric, water, 16 merchandise and employees. So I could see why when 17 entertainers start filling up the Boardwalk it cuts 18 the shops off. I could see why they're all mad at 19 us. 20 Improving locations on the Boardwalk. You 21 know the wood walkways that go out to the beach.</p> |
| <p style="text-align: right;">Page 43</p> <p>1 costumes. And the shows are not bad either. 2 Balloon blowers. Mad Hatter. And in a mobility 3 schedule, Old Pirates, Snow White. Children of all 4 ages need balloons. Don't ask me why but they do 5 need them. Magic. Amazing Josini. Jimmy talks a 6 lot, a lot of circus programmers, straitjacket chain 7 escape, unicyclists, jugglers. Quite a gathering of 8 watchers. Needle Arjari. Performers. Bill Hassay, 9 a violinist with backed up music. Old Gypsy, 10 violinist. Three girl violinist, one oriental 11 guitar player just playing mic, guitars and drums 12 and other guitars. Roy, steel guitar. Tony Button, 13 Golden Man. Mr. Squeaky. Tim Wethermore, 14 didgeridoo player. Piano Man. Jim, The Puppet Man. 15 Steel Drummer. One Man Band. Tony Buckets, plastic 16 buckets. All these performers do an excellent job 17 at performing. 18 Once again, henna temporary tattoos should 19 not work on a boardwalk. Not entertainment. They 20 just sit there around all day. Plus I've heard 21 things about the henna tattoos. It is not original.</p> | <p style="text-align: right;">Page 45</p> <p>1 One or two platforms can be placed on each side of 2 that, with lighting, and these would be set-up 3 stages for performers. They would be away from the 4 Boardwalk so that you may be able to perform. 5 Partial walkways also can be on street endings 6 except where the lifeguards come on and off the 7 Boardwalk. That's one that's very questionable, you 8 know. It would be, it just depends on the 9 entertainers. If it's a group that really needs a 10 larger stage, they just have to work out with the 11 Mayor and City Council to get themselves a couple 12 extra sections added on so they have a larger 13 section just off the Boardwalk in the sand so people 14 can watch them as they do their routine. This will 15 help to reduce the overcrowding on the Boardwalk. 16 Oh, another thing, too. Advertise your 17 favorite shop or store on and off the Boardwalk. 18 Let people know about your favorite shops. 19 Audition. New performers wanting to 20 perform on the Boardwalk should give you or city 21 lets you know what he or she will perform. Music,</p> |

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1 dance, magic or other talent. The ones that are
2 chosen will receive a permit or a license and pay a
3 hundred dollars for the season.
4 These are just some of my ideas on trying
5 something different. And if you don't try it, how
6 do you know if it's not going to work or not? Any
7 questions, please?
8 MEMBER CHASE: Jim, if you apply for the
9 permit and all of a sudden City Hall deems that
10 puppetry such as what you do is not allowed or that
11 you don't have the luck of actually getting drawn a
12 certain day do you not feel that you feel a little
13 jaded that you're not able to actually stroll the
14 Boardwalk with your puppet or do whatnot just
15 because you didn't win the flip of a coin?
16 JIM STARCK: Yeah.
17 MEMBER CHASE: So do you think it would be
18 fair to pull your name out of a hat and determine if
19 it's --
20 JIM STARCK: That wouldn't work, no.
21 MEMBER CHASE: So a lottery system

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1 wouldn't work?
2 JIM STARCK: No, it certainly wouldn't.
3 But yet by additions, you know, just letting people
4 know, people that are already there should know
5 what's going on, you know. But new people coming in
6 telling people right where they should be located.
7 And as for moving, for years I've heard this, that
8 the performers should move from one location to the
9 next and continue this, you know. Every night I
10 move all over the Boardwalk. I'm not a limpet. I
11 move. I move freely all over, seeing, one, who is
12 there and, two, seeing what goes on, you know. And
13 I thank you very much.
14 CHAIRPERSON SHOCKLEY: Thank you. Jimmy
15 Miller.
16 JIMMY MILLER: Good afternoon, gentlemen.
17 My name is Jimmy Miller, Somerset South. I'm from
18 the Atlantic Hotel between Somerset and Wicomico
19 Street. Been on the Boardwalk in that location
20 39 years.
21 There's nothing I can say that hasn't

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1 already been said. We've covered every issue. I
2 think the important issue what we're talking about
3 is safety. We have to maintain the public safety.
4 I don't feel that it's, the city has to figure out a
5 way how to get a generator up on the Boardwalk. I
6 think they should just be outlawed on the Boardwalk.
7 There's too many safety issues concerning it.
8 Either that or special permits issued.
9 When you have special events and people
10 have generators and set up tents and, you know, fire
11 officials go in there, they check everything.
12 I have a whole list of things but they've
13 all been covered. Another important thing is
14 security. Time after time, customer after customer
15 has come into my store and continually complained
16 that on the corner of Somerset Street and the
17 Boardwalk there was an empty suitcase. They didn't
18 know what was in the suitcase or who owned the
19 suitcase. And what are they supposed to do?
20 Fortunately, fortunately, you know, I
21 would call the Ocean City Police Department. They

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1 would try to take care of it. Every time it's a
2 street performer's, it's okay, it's allowed to be
3 there. But no, it's not allowed to be there. It's
4 not allowed to be there unattended. May 28th of
5 2014 somebody called 911 for an empty backpack that
6 was on the bench. They cleared the block in front
7 of where that backpack was, had to bring the robot
8 out to make sure there was nothing in that backpack.
9 To me, that is the most important thing for the
10 public, the safety, security.
11 It's hard for me to comprehend how the
12 city can pass a no smoking law but then allow fumes
13 from generators, and, Mark, fumes from your painting
14 to be allowed on the Boardwalk. It doesn't,
15 there's, really it doesn't make sense to me.
16 I also find it curious that other than Jim
17 and maybe one other street performers, Mark, there
18 isn't anybody here. They're not helping us out.
19 Why is it us that have to deal with a really bad
20 situation and try to figure it out on your end? Why
21 aren't you guys helping us out? You know? Why are

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1 you so against a lottery system? Why are you so
2 against having guidelines that say that a costume
3 performer has to be registered with City Hall?
4 They're not laws. They're just guidelines that need
5 to be followed for the safety of the public. And
6 what went on in that Boardwalk this summer cannot
7 continue. Number one, you're going to lose
8 Lieutenant Mark Pacini who is actually one of your
9 best police officers on the Ocean City police force.
10 He has put more time in this situation than anybody,
11 anybody in all of Ocean City. I commend him more
12 and he has more information concerning this subject
13 than any other person sitting in this room. And I
14 feel bad for him because he's out there trying to
15 clear up gray areas. That's all he talked about
16 last Friday or the last meeting was the gray areas,
17 how we have to clear up these gray areas. And he
18 was, he was put in the middle all summer long. You
19 know? Between the tourists and between the street
20 performers.
21 And trust me, you know, it's another

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1 reflection when a street performer is not nice to a
2 tourist, it's just a reflection of Ocean City. If
3 they don't get enough tip in their jar, Mark, they
4 get a little bit upset sometimes. Does that help
5 out Ocean City? It doesn't help out your business
6 either because they're not going to go to the next
7 street performer.
8 Will Ocean City be able to ban street
9 performers? No. But I think if we do it in an
10 orderly fashion, I mean, everybody can basically
11 probably live together. I've never seen even during
12 the One World fiasco that went down, you know, 8,
13 10 years ago it was nothing like what went on last
14 summer. And it was just a constant battle. And
15 there's guidelines have to be brought to the, have
16 to be written. Have to be followed. I don't know
17 what else we can do.
18 It's a give and take situation. The city
19 shouldn't have to give everything. It's got to be,
20 you know, a coordinated effort on everybody. That's
21 all I have to say, guys.

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1 CHAIRPERSON SHOCKLEY: Any questions?
2 JIMMY MILLER: Thank you for your time and
3 attention. I appreciate it.
4 CHAIRPERSON SHOCKLEY: Thank you.
5 Jessica Guthrie.
6 JESSICA GUTHRIE: Hello. Thank you for
7 permitting me to speak. I am the mermaid who paints
8 on the Boardwalk. I've done this the last 4 years.
9 And I do agree with a lot of the problems that have
10 been addressed already. There's a lot of
11 overlapping of performers. Like it just started to
12 look like Disney on hard times with all of the
13 costume people out there.
14 There was way too much henna. When the
15 storefront owners are paying for henna to be part of
16 their shop I completely see why this is problematic.
17 These people are coming in for free, keeping all the
18 money they make if they're doing henna. I can see
19 why that would be a problem. But there are a lot of
20 us who do fully comply with all of the city's rules.
21 I try very hard to be one of those people. And a

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1 lot of people previously mentioned are also very
2 good performers.
3 I feel like the Boardwalk is for
4 performers that brings a lot of families, a lot of
5 families are, you know, with children and, you know,
6 there's that pole dancer who doesn't need to be
7 there but I'm really trying to help in what I do to
8 bring back the wholesome familyness of Boardwalk
9 entertainment.
10 I've been out there, like I said, this is
11 going to be my fourth year and people now say they
12 look for me. I've become a staple of their family
13 vacation. I really appreciate -- I mean, I don't
14 get rich. I charge tips. A lot of times people
15 don't pay me at all, and I don't say anything. I do
16 it a lot for fun and it's just very enjoyable.
17 I'd like to point out some concerns I have
18 taking some notes from some suggestions. Some were
19 good but I do not see how a lottery system is going
20 to work because who is -- I mean, okay, so with the
21 example of drawing a name out of a hat, I mean, it's

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1 just, it doesn't work. It's not providing fairness
2 for a lot of us. And I mean, with rotating
3 performers I can see that if someone is, you know,
4 like a Bart Simpson example, if someone has to
5 listen to something they don't want to listen to for
6 long periods of time that would be really
7 aggravating. But can you imagine the congestion
8 with everybody playing musical chairs and trying to
9 get up and go to the next spot? Is the city going
10 to go through all the trouble to assign every person
11 each spot they're going to move to that night? I
12 feel that's a lot of unnecessary time on the city's
13 behalf for planning a schedule and I feel like it is
14 our duty as Boardwalk performers to not be the
15 city's problem and we should all be able to work
16 together to be very self-contained and abiding by
17 what's already out there.
18 I just don't feel like we need to have the
19 city put more time into making up schedules and
20 going about moving. I mean, I feel like it's first
21 come first served like it's always been since I've

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1 been there. You want to be there and you want to do
2 something, you go out there and you do it. I just
3 don't see why it's fair to tell people that they
4 can't be here because it's not their time slot.
5 It's making it like a job. That just doesn't work.
6 Excuse me for a second. Another issue
7 that was brought up was concerns for allergies and
8 touching faces and hair. What I personally use is
9 hypoallergenic water-based paint. I spend hundreds
10 of dollars on my paint. It's very high quality. It
11 is specifically for kids with skin conditions, in
12 fact, just to be safe for those few. There's a lot
13 of gluten intolerance and, you know, kids can even
14 get that touching their skin. I'm very aware and
15 well read about concerns.
16 This isn't all about me. I don't actually
17 feel like my specific thing is in jeopardy. I was
18 just putting that out there just in case. But I
19 just really would like you to reconsider the lottery
20 system and how that would just become a lot of
21 problem on the city's behalf. And, you know, if

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1 you're going to have a way to identify yourself,
2 that's fine too. Some ID, having to show that you
3 don't have a criminal record. Like I think it
4 should be harder for costume people because, you
5 know, if you're going to have that anonymity, then
6 maybe be a little bit more accountable for who you
7 are underneath of that mask. But for the rest of us
8 I'm afraid that applying for a permit would be more
9 than paying the city and bringing in that revenue
10 but it would turn into the city deciding whether or
11 not you should be able to do what you do anymore.
12 And I just really like the way things are with if
13 you comply and the fairness that you should be
14 allowed to just do what you do. And thanks. Sorry
15 it's scattered. That's all I have to say.
16 CHAIRPERSON SHOCKLEY: Any questions?
17 Thank you. Anybody else have anything they want to
18 add? Mike.
19 MIKE MUELLER: Yeah. I -- thank you very
20 much for the opportunity to be here. I live over
21 4 hours away in Pennsylvania, but --

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1 CHAIRPERSON SHOCKLEY: Mike, before you
2 get going, can we have your last name?
3 MIKE MUELLER: Oh. Mike Mueller. Thank
4 you. In the last meeting before this group the
5 words street performers are here to stay were
6 uttered a number of times. The rejoinder that was
7 not uttered was, after that line, was so get used to
8 it.
9 Now, implicit in this statement is the
10 fact that, and it's obvious, there are numerous of
11 people in the Ocean City community who wish that the
12 street performers would disappear from the Ocean
13 City Boardwalk if not entirely, then at least to a
14 large degree. And we have heard why. Through
15 anecdotes of varying flavor that basically all boil
16 down to street performers are keeping people away
17 from my business. Performers are taking away my
18 sales. And street performers are annoying.
19 Now, I can tell you being a street
20 performer and working with other performers and
21 buskers for over 10 years now, I can definitely say

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| <p style="text-align: right;">Page 58</p> <p>1 that we are in fact annoying. But we are also 2 entertaining and we bring a ton of value to the 3 Boardwalk that we so often do not get credit for. 4 Now, part of my performance as an artist 5 -- and I draw people one-on-one-- is I get to talk 6 to them one-on-one at some length. The one thing 7 that never ceases to surprise me is how often 8 visitors to Ocean City genuinely love the 9 performances that I don't personally care for, and 10 they cite acts like the guy who paints himself gold 11 and squeaks endlessly as being the best part of 12 their vacation. One person's thing that drives them 13 nuts is someone else's favorite thing. 14 The value that we bring as street 15 performers and artists is hard to quantify, and it's 16 not like the money in a cash register which is much 17 easier to count. And I've heard some businesses say 18 that they're losing money because of performers. 19 But I believe a lot of that is in a certain sense 20 unsubstantiated. There's something called 21 observational bias. When you're sitting in traffic</p> | <p style="text-align: right;">Page 60</p> <p>1 living as an artist more difficult because I'm super 2 exposed as it is, literally. I sit outside in the 3 sun and the rain, and if it rains my stuff gets 4 ruined and I go home broke for the day. And my eggs 5 are all in one proverbial basket for the year. I 6 count on the summer just as much as any of these 7 business owners do. I make art at a very high 8 level. It's because I've been doing it for years 9 and I've dedicated myself to my art. And I'm not a 10 college student just kicking around for beer money 11 on vacation. I'm a grown man and I have major 12 expenses and responsibilities. And aside from being 13 a school teacher, I can't think of too many jobs 14 where you can take off for the beach for the summer 15 and still have that job waiting for you in the fall. 16 Being a sketch artist is my career. It's a major 17 part of how I support myself. I'm risking a lot to 18 be in Ocean City for the summer. 19 It scares me that there are people who 20 might try to change the law to make it harder for me 21 to do what I love and still be able to put food on</p> |
| <p style="text-align: right;">Page 59</p> <p>1 you always think that your lane is going slower than 2 everybody else's lane when in fact it may not be. 3 Budgets are tighter right now and traditionally in 4 tougher economic times more people turn to things 5 like street performing or, you know, to use another 6 example, opening a food truck instead of a 7 restaurant. This is certainly happening. The 8 correlation does not imply causality. More street 9 artists and slower summer business does not 10 necessarily mean that the artists are causing the 11 show-down. 12 Nevertheless, it's an understandable 13 problem that the businesses have with performers. 14 Most performers, myself included, will begrudgingly 15 acknowledge that. 16 I also want to talk about the problem I 17 have with the owners. Now, I drove 4 hours this 18 morning to be here because I'm super-stressed out. 19 I can't tell you how anxious it makes me feel that 20 there's a group of people who potentially want to 21 create more rules and regulations that might make my</p> | <p style="text-align: right;">Page 61</p> <p>1 my table in the winter. You can tell me I should go 2 get a storefront of my own, but I don't think that I 3 should have to have a brick and mortar business to 4 draw a picture of someone on a street and receive a 5 few bucks for my time. I just don't think it's 6 righteous for the city or for businesses in it to 7 try to make me go sit in a corner somewhere and make 8 my art where no one is watching, where no one can 9 discover me by accident and be delighted. 10 Actually, we do already have to work in 11 the corner, on the street ends only, but at least we 12 can still get an audience. Some people would end 13 that or shuffle us around further. Why? Because a 14 store might lose a sale due to a street performer. 15 Now, stores lose sales to each other all 16 the time. A person buys a mug or a kite and so she 17 doesn't also buy a T-shirt. Now, that's not going 18 to make the Boardwalk task force discussion page 19 because all those vendors are sticking together as 20 part of community. And it's a somewhat exclusive 21 community where there's a very high barrier to</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 entry. Street performers are part of a similar 2 community and we profit from the same clientele but 3 we don't have the same high entry requirements, or 4 at least that's the perception. So we are to be 5 dealt with and blamed. 6 The problem here is that there are two 7 communities at odds with each other. They're not 8 defined by race or by sex or religion but by 9 economics and in a lot of ways, in a lot of very 10 real instances on the Ocean City Boardwalk it's a 11 struggle between the haves and the have nots. So in 12 my humble opinion I feel like I've cut right to the 13 heart of the problem. But what would a solution 14 look like? 15 All right. In my perfect world the ideal 16 solution looks like this: The hardest working and 17 the most talented street performers can find the 18 spots they want where they can be highly visible to 19 the most people and do well. They don't block 20 stores or public amenities from practical access. 21 Virtually anyone who wants to perform has access to</p> | <p style="text-align: right;">Page 64</p> <p>1 Now, spring is right around the corner. 2 Maybe we can get the Easter Bunny to start working 3 on this. 4 I understand it's a very tall order and it 5 is very, very difficult to resolve this issue and it 6 won't be easy. But I think the conventional wisdom 7 in these situations is to legislate a better 8 situation, and one of the answers I've heard bandied 9 about in the last meeting and today is what about a 10 lottery system where performers get an assigned spot 11 and then they have to rotate. 12 It was cited that Santa Monica, California 13 does something like this and we heard about Venice 14 Beach today. Forcing a rotating schedule on a 15 lottery system, for me it is -- it's going to be a 16 nightmare for Ocean City. I lived in southern 17 California where I practiced my art for 7 years and 18 I'll tell you one reason why -- first of all, and I 19 may come back to it, I don't understand how a 20 lottery system or forced rotation is any less 21 restrictive than a permit which courts have already</p> |
| <p style="text-align: right;">Page 63</p> <p>1 some spot to do so and thereby excluding no one. 2 Businesses warmly embrace or at least they 3 respectfully tolerate the street performer community 4 and they also get to have some control over who 5 performs outside their front doors. A business's 6 exposure to those performances and who it deems to 7 have a detrimental affect on its operation, that 8 should be minimized or eliminated. 9 Businesses benefit from the drawing power 10 of a performance atmosphere but don't lose 11 significant revenue to performers. Store owners 12 don't use first amendment protections to expand 13 their businesses beyond their shops into the public 14 domain. Street performers don't sell hard goods 15 that have more than nominal value apart from 16 expressive value unless the item is made in its 17 entirety from raw materials as part of the 18 performance. Performances are safe for the general 19 public. And in my perfect world this is achieved 20 and enforced in a way that places minimum burden on 21 Ocean City's police resources.</p> | <p style="text-align: right;">Page 65</p> <p>1 ruled doesn't respect the rights of performers. But 2 that's -- they were able to get away with it out in 3 Santa Monica and Venice Beach. And I'll tell you 4 why I think that is. 5 They have a population in Los Angeles, a 6 population base to draw from of probably almost 10 7 million people or more. I don't have the facts 8 right in front of me. In Ocean City we're dealing 9 with maybe 10s of thousands of people. It's a 10 tremendous difference. And so -- and the other 11 major factor in Santa Monica or Venice Beach is they 12 have 365 days of sunshine, 365 days for which 13 performers can perform. 14 So putting those restrictions, you know, 15 on freedom of speech and freedom of where you can be 16 actually makes sense in a way because there are way 17 too many performers to accommodate the spots. 18 There's a tremendous differentiation there. And 19 there's a seasonal difference, too. Whether people 20 here realize it or not there is a very big barrier 21 to entry for street performance here in Ocean City.</p> |

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1 Most of the housing here in Ocean City is set up for
2 vacationers and as such it's very expensive. You
3 can't make a living as a street performer and pay
4 rents at a hotel. It's just not financially
5 feasible. You're not going to get those people to
6 do that.

7 You are limited to the very limited number
8 of places that offer seasonal rentals. So you're
9 limited to the number of performers that can
10 realistically come and live all summer in Ocean City
11 and perform. I mean, there's a cap. It doesn't
12 make as much sense here. And if you do do a lottery
13 system, you're also impinging on the rights of those
14 vacationers that are maybe just coming and they're
15 going to stay here for a week and they've always
16 dreamed about being on American Idol but American
17 Idol is not nearby. So I just want to go out on the
18 street and play my guitar for a little bit and have
19 some fun.

20 How does their experience factor into the
21 whole lottery system and the whole permit system?

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1 How are they going to come and be in town for a few
2 days and make heads or tails of this to make that
3 happen?

4 Going along with the system is that you're
5 talking again a city of millions of people and the
6 law enforcement system they have there is so much
7 more robust. Who in this town in Ocean City is
8 going to maintain and support the organizational and
9 the auditing and all the different factors that come
10 into play to make sure that these procedures are
11 being followed or that they're properly being
12 adjudicated?

13 Right now we have this terrifically
14 fantastic system that a lot of store owners don't
15 realize and that is the street performer community
16 which I mentioned earlier and we do a lot to
17 self-regulate, I believe.

18 I want to mention Venice Beach for a
19 second. The lottery system in Venice Beach, and I
20 know this when I was there, was set up because due
21 to the wonderful warm weather they have in southern

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1 California there are, there is a tremendous homeless
2 population. And it was easy for the homeless people
3 to basically just camp out on the beach. They would
4 set up blankets and they would sell things. A lot
5 of them sold things that they had dug out of the
6 trash, you know, resold, recycled items. There were
7 other people selling, there were other people
8 hawking. There wasn't a lot of good street
9 performance.

10 And the lottery system there was
11 introduced in order to basically cut down on that
12 riffraff because it was a lot more initiative that
13 you had to take. Homeless people weren't going to
14 go and they weren't going to get the permit and they
15 weren't going to enter the lottery system. I'll
16 tell you what happened in Venice Beach if any of
17 you haven't been there.

18 Now, anytime you start to put in a rule or
19 a system like this, it's apt to get challenged and
20 you never know how the outcome of that challenge is
21 going to go. I'll tell you what currently became of

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1 Venice Beach. You have the shops on one side of the
2 Boardwalk and then you have a zone on the other side
3 of the Boardwalk where there are wall-to-wall tables
4 just as far as you can see. And they're all up to
5 the lottery and basically small business owners and
6 people go and they put in for the lottery and then
7 they bring out their table, their cart, they set it
8 down. And then they go ahead and they sell and they
9 hawk jewelry, T-shirts, sunglasses, gloves, whatever
10 they want. Oh, you can say oh, we won't do that
11 here in Ocean City. Well, as soon as you have this
12 like restrictive thing in place businesses want to
13 jump on that because one of the things that works
14 really well about the current system, first come
15 first served, when you go out to the Boardwalk is
16 that you are limited as a performer to what you can
17 schlep out there. I mean, different performers who
18 are more ambitious than others have come up with
19 different ways -- use a cart, use a dolly -- but you
20 are still limited to what you can bring.

21 If you know in advance that you have that

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| <p style="text-align: right;">Page 70</p> <p>1 spot and it's for you, you could pull up in a van 2 and start unloading. Now, you can say you can 3 legislate that away, but if you legislate the 4 footprint away that you can have, they'll build 5 right up. If you know where you're going to be able 6 to be set up on any given day you can bring a ton of 7 stuff out there. And that's what the businesses out 8 in Venice did. I don't know, I believe it was 9 challenged in Court and the Court ruled there that 10 as long as you put a note on your table that said 11 for donation, you can then go ahead and negotiate 12 any price you wanted and you were free to sell 13 basically anything you want and then directly 14 compete with the stores. 15 What we have right now is a system where 16 you really truly do have to be a performer to be out 17 there. And I wouldn't push that in a different 18 direction or push that away. I really do feel that 19 in a lot of ways a lottery system that stores and 20 businesses have more to lose than they think from 21 that.</p> | <p style="text-align: right;">Page 72</p> <p>1 negotiate among ourselves, you know, where we, you 2 know, who was going to go where, who was going to go 3 here, and we knew that we were sorely limited in 4 spots because of a lot of this henna stuff that was 5 going on. It was restrictive and in some ways it's 6 possible that a system of rotation could benefit me 7 as a performer. But it's not worth it because I 8 know that if I hustle, I can go out and find a spot. 9 This summer was the most challenging, most 10 difficult summer that there was in terms of 11 competition or, you know, the henna and the shortage 12 of spots. But I was still able to make it work and 13 I think that people who do want to make it work, who 14 are willing to put the hustle in, can get the spots. 15 The other side of that is if you get the 16 people who are most willing to hustle, most willing 17 to put in the time to go out and get those spots 18 they're most likely to be the people who are going 19 to put on the best performance and the best show and 20 give the best back to the community. 21 It brings up another concern, again if you</p> |
| <p style="text-align: right;">Page 71</p> <p>1 Let me see. Let me get my notes. I 2 thought I had a lot of good things to say. 3 Well, you have like a great system where 4 the performers regulate themselves, and one of the 5 things that worked great about the last summer is, 6 and a lot of people have said it, as a street 7 performer the work of Lieutenant Pacini has been 8 just outstanding and I don't know, he can probably 9 speak more to it than I can, but it was wonderful 10 the way -- and it took a little while but they got 11 rid of the problem with the henna and the J-1 12 students that were I guess violating the law being 13 out there. In my experience from what I saw is that 14 street performers were able to at least help do some 15 of the police work on that. 16 I know that I personally myself videotaped 17 store owners bringing out dollies and carting out 18 henna stands from their stores out to the Boardwalk. 19 Everybody knew who was doing it. Everybody knew 20 what they were up to, because we were out there and 21 we were working together and we were trying to</p> | <p style="text-align: right;">Page 73</p> <p>1 do a lottery system, let's say someone is assigned a 2 spot. They only want to go there for like 2 hours 3 and play. The rest of the day all day long the spot 4 is unoccupied. What happens when another performer 5 comes and feels like I didn't get assigned a spot in 6 the lottery. Now I'm losing out on my 7 constitutionally protected right to perform so that 8 this spot could sit open because this other 9 performer didn't want to show up. Well, I take it 10 upon myself to set up in that spot. Well, now the 11 other performer shows up, and this is another 12 problem they had in Venice Beach, the other 13 performer shows up and says oh, I got this spot. I 14 was only going to play for an hour. Well, you need 15 to get out of here. Well, the other guy's like I'm 16 already here and I'm expressing myself. I'm doing 17 my thing. Now you have another challenge for the 18 police. 19 So you're not actually alleviating the 20 police burden by creating this whole lottery system. 21 You're only creating a different kind of burden</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 which is potentially even more difficult to deal 2 with. 3 So I want to talk about what I think could 4 be a solution. I think that in general street 5 performers only stay in the same spot because they 6 have a hard time finding a spot. I know a lot of 7 the people with the big circle acts, for example, 8 case in point is that there's a lot of businesses 9 that give them more of a hard time than others. So 10 the end, where they I think end up finding a spot 11 and staying put is like the path of least 12 resistance, the place where they find where they 13 feel like they can do well at the performance and 14 get the least amount of static and push-back from 15 the business community is the place where they will 16 go and stay. 17 I think if you want to see them move and 18 just organically create that and be able to create 19 like a community connection between performers and 20 businesses is just have more spots. And having more 21 spots doesn't mean like moving everybody over to</p> | <p style="text-align: right;">Page 76</p> <p>1 also think that there was a very large push from 2 some of the business owners that draw a lot of 3 weight in this town that happened to be right there 4 on Division Street. So I'm sorry if it is not 5 political to be mentioning that right now but I 6 heard that was part of it. And it made sense then 7 because there were plenty of other places to go. 8 If you're going to remove Dorchester and 9 now obviously there are more acts, there are bigger 10 acts, it's grown in the last few years, if you're 11 going to take away Dorchester and you're going to 12 take away Division you've got these big circle acts 13 and they really don't have any other place to go. I 14 know because I've worked on Dorchester and I've seen 15 it. For setup and loading for the Dew Tour you can 16 get 18-wheelers up and down that path in Dorchester 17 all day long. So I don't understand why it's not a 18 place where you can use for access for fire 19 vehicles, and that's not really my job to say. I'm 20 not an expert in safety and security. But it does 21 seem like that is another venue. Maybe it's time to</p> |
| <p style="text-align: right;">Page 75</p> <p>1 some like different area but is actually like 2 creating, free up more spots on the Boardwalk. 3 One of the things that I heard was that it 4 sounds like there's a big push, and maybe rightfully 5 so, to free up Dorchester Street for use by the 6 beach patrol, which makes a lot of sense, except for 7 the fact that I think it was 3 or 4 years ago 8 Division Street was shut down as a place to perform. 9 Now, it is my understanding and perhaps it is an 10 incorrect understanding but I can tell you from 11 memory that at that time there wasn't nearly the 12 street performer traffic on all the other streets 13 across the Boardwalk. There was a large percentage 14 that were utilizing Division Street for their big 15 circle shows and there's much less, much smaller 16 shows on the other street ends in the other areas 17 along the Boardwalk. So it made a lot of sense. 18 Hey, there's plenty of room on all these other 19 streets. Let's shut down Division Street because we 20 need it for these, you know, I heard something cited 21 about fire access for the fire trucks and things. I</p> | <p style="text-align: right;">Page 77</p> <p>1 revisit Division Street because that would be a 2 great place to put some of the circle acts that are 3 just so big and so obstructive to traffic and 4 creating problems. 5 The other thing that maybe we can 6 consider, I don't know, is the fact that now 7 performers are only able to perform on the street 8 ends. Now, this wasn't always the case. There was 9 a time when you could perform anywhere on the 10 Boardwalk and also this was a time when if 11 businesses were having a problem with you being too 12 loud they could say something and you could be asked 13 to move along. 14 I don't know if, I know that it's very 15 much against the interests of a lot of businesses to 16 want to open it up, to make it a situation where 17 there could be more street performers. But maybe we 18 can relax the enforcement on some of these areas 19 without outright allowing it. Like maybe Division 20 Street instead of becoming an off limits area can 21 become a discretionary enforcement area where the</p> |

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1 police can make it off limits during times when
2 there is, for example, the fourth of July and there
3 needs to be fire trucks present right there, or for
4 different various other reasons. Maybe, you know,
5 maybe it would be permissible to have that sort of
6 discretionary.

7 I think another great way to create sort
8 of a collaboration and have street performers
9 answerable to small businesses or to the businesses
10 with storefronts make any space between street ends
11 also a discretionary area where performance is
12 allowed. So the guy who all he wants to do is go
13 out and strum his guitar and jam out a little bit
14 can go do that.

15 Since it's technically not a permitted
16 performance area the store owner can come right out
17 and say listen, keep it down. If you don't keep it
18 down you're going to have to go because technically
19 you're not allowed to perform here.

20 What's the benefit in that? I'll tell you
21 what the benefit of that is. The benefit is that it

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1 frees up space on the street ends for the big acts
2 that would never work anywhere but the street ends,
3 for these big circle acts. If the circle acts are
4 given more opportunity at the end of the streets to
5 go, if they have more places that are available to
6 them, they'll be less likely to want to stay put and
7 annoy somebody for the whole summer and for the
8 whole season.

9 Then I would certainly hope and I would
10 certainly abide by this, I would honor the requests
11 of local businesses and try to accommodate. If I
12 have another place to go why would I just want to
13 sit there and create a problem for somebody who --
14 and I do want to say, I hope it didn't get lost in
15 any of the other things, I think businesses and
16 everything that Ocean City has done is a fantastic
17 place. I feel incredibly honored and privileged to
18 be able to come, perform and live for sometime
19 during the year here.

20 And I also want to say that I just think
21 that even given the current situation the police

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1 force has just done an outstanding job and I think
2 that Lieutenant Mark Pacini has done a fantastic job
3 working with a very difficult situation that he's
4 had.

5 A lot of people think it's broken, a lot
6 of people think it's more broken than I do, and I
7 would just strongly encourage that the situation
8 didn't get to where it was today overnight. I would
9 ask this committee to make small recommendations
10 that change things in increments so that we can see
11 what works, we can see what doesn't work, and not
12 try to make some kind of huge sweeping change that's
13 going to take place this summer and just muck up
14 matters worse and make things even more difficult
15 than they already are.

16 I think that's pretty much it. I know I
17 spoke for a while but I hope I had some valuable
18 things to say. If anybody has any questions I'm
19 happy to put my \$0.02 in.

20 CHAIRPERSON SHOCKLEY: Go ahead.
21 YADIGAR KARSLI: I know him very well.

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1 He's my friend. He's very nice guy. He's somebody
2 a joy to be on the Boardwalk. He deserves to be on
3 the Boardwalk. But I don't agree with some of the
4 things he said. Do you know this lady?

5 MIKE MUELLER: Yes. Wonderful lady.
6 YADIGAR KARSLI: What does she do?
7 MIKE MUELLER: I'm pretty sure she does
8 henna.

9 YADIGAR KARSLI: Where does she do it?
10 MIKE MUELLER: Huh? What?
11 YADIGAR KARSLI: Where does she do it?
12 MIKE MUELLER: She does it at a store
13 location.

14 YADIGAR KARSLI: Store location. And
15 sometimes you set up on 1st Street; is that right?
16 MIKE MUELLER: Not so much these days but
17 I have before in the past.

18 YADIGAR KARSLI: Okay. Say someone who
19 sets up henna tattoo on 1st Street and if they say
20 henna tattoo is free, even if it's not true, they
21 pay for one or two and they get third one is free,

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| <p>1 do you think she loses revenue or not? 2 MIKE MUELLER: I have no doubt that she 3 loses revenue. I think that, I mean personally I 4 see a lot of merit to the point that -- 5 YADIGAR KARSLI: I will ask her. How much 6 rent you pay. 7 A FEMALE: 40,000. 8 YADIGAR KARSLI: Do you pay taxes? 9 A FEMALE: I pay taxes. 10 YADIGAR KARSLI: License? 11 A FEMALE: License. 12 YADIGAR KARSLI: Payroll? 13 A FEMALE: Payroll. 14 YADIGAR KARSLI: How do you like she's 15 going to compete if we have those people on the 16 Boardwalk and they say it's free? 17 A FEMALE: And it's free. And costs me. 18 MIKE MUELLER: The street performers on 19 the Boardwalk are required by federal and state laws 20 to pay taxes. I do. 21 YADIGAR KARSLI: One more thing, sir.</p> | <p>1 take responsibility. 2 MIKE MUELLER: Yeah. I know. I want to 3 say that when I'm speaking and someone just said 4 that there are a lot of street performers not 5 present, I wanted to as much as possible speak for 6 all street performers. But I want to say that I 7 agree with you on the fact that there is a risk to 8 henna and I want to say that I think that one of the 9 biggest problems as what you're saying is 10 accountability is a problem. I think the fact that 11 you can go to a henna artist on the Boardwalk and if 12 you've got a piece of henna done on you, you may 13 have a problem with it and they may be gone and 14 you'll never see them again and it is a problem for 15 accountability. How are you going to go find that 16 person? I believe that's a public health and safety 17 issue and I think that powers that know about that, 18 you know, I think, I don't see that the same as free 19 artistic expression. When you're, you know, when 20 you're doing something that involves health risks, I 21 think that's a little different.</p> |
| Page 83 | Page 85 |
| <p>1 MIKE MUELLER: A lot of us do. 2 YADIGAR KARSLI: One more thing. 3 MIKE MUELLER: You pay property tax and 4 you do pay a terrific amount of rent. 5 YADIGAR KARSLI: Okay. I want to ask you 6 one more, please. 7 MIKE MUELLER: Yeah. Yeah. Sure. Sure. 8 YADIGAR KARSLI: Do you pay insurance for 9 henna tattoo? 10 A FEMALE: I pay insurance. 11 YADIGAR KARSLI: How much you pay? 12 A FEMALE: \$1200. 13 YADIGAR KARSLI: For professional 14 insurance for somebody get -- 1200, that's for job 15 liability if sometime fall down somebody there. 16 Professional insurance for giving henna extremely 17 difficult and she paid \$3,000. And your program 18 doesn't have any liability. They just go over 19 there. You don't know their name. Somebody get a 20 reaction, you cannot find them. And it happens two 21 times. They couldn't find the people. They didn't</p> | <p>1 YADIGAR KARSLI: Another thing, in my hand 2 I have a Venice Beach ordinance in my hand -- 3 MIKE MUELLER: Um-hmm. Yeah. 4 YADIGAR KARSLI: -- which says you cannot 5 do henna tattoo, hair wrap, you cannot touch any 6 charted item. It's ordinance. If somebody does it 7 they're going to move them right away. 8 CHAIRPERSON SHOCKLEY: All right. We 9 have the Venice Beach ordinance, and thank you, Mr. 10 Mueller. I mean, he can only speak to what he does. 11 He can't really speak to henna. 12 YADIGAR KARSLI: Yes. 13 MIKE MUELLER: But I do see the problems 14 with the henna tattoos and potential dangers of body 15 art and those things are, they're touchy and other 16 places -- I don't really want to speak to those 17 things. But I do -- 18 CHAIRPERSON SHOCKLEY: Any other 19 questions? 20 AUDIENCE MEMBER: Do you charge for your 21 artwork?</p> |

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1 MIKE MUELLER: It is my understanding that
2 we are now permitted to charge because of a court
3 ruling. I do not have prices posted to this day. I
4 have been told actually even by law enforcement that
5 I would be allowed to post prices. I personally
6 give anywhere between a half a dozen and more than a
7 dozen drawings absolutely for free out to people in
8 the community. People think that I do very well. I
9 do all right. But one of the things I know is that
10 I need to look busy at all times. I do consider
11 myself first and foremost a performer and so I take
12 pains to be performing.

13 Generally anybody who wants a caricature
14 from me will get one regardless of what kind of
15 money they have to shell out for it. I believe that
16 that is the heart and soul of what it means to be
17 out there performing and not be in a retail
18 location. So.

19 AUDIENCE MEMBER: Preferably you would
20 rather have somebody paying you for your artwork as
21 opposed to --

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1 CHAIRPERSON SHOCKLEY: You guys aren't
2 asking questions. I mean, it's up to us to ask the
3 questions. Thank you. Any questions from up here?

4 MEMBER KNIGHT: I have one. You said
5 henna tattoos aside, henna stands aside, you say you
6 take part in a lot of self-regulation out there.
7 What kind of self-regulation do you do?

8 MIKE MUELLER: What kind of
9 self-regulation do we do? It can be a challenge to
10 find a spot and I think that generally we try to
11 accommodate other artists and other street
12 performers and try to make sure that everybody gets
13 a spot and gets a place to set up, you know.

14 I think that we exert pressure on other
15 members of the artistic community. If we feel that
16 we, you know, feel like that there's a performance
17 that isn't good or isn't healthy, we'll go up to
18 them. If I see something that's profane or not
19 right -- I mean, the pole dancer never showed up to
20 try to perform next to me, but we would certainly
21 have words and if the words didn't work out then I

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1 would closely observe and I would watch and I would
2 see, you know, if there were any laws or anything,
3 you know, violations being broken I would bring that
4 to the authorities. I would talk with other street
5 performers and find out what they saw.

6 I think overall we try to make sure that
7 there's a fair and equitable system in place for
8 each other, you know, and we try to resolve
9 conflicts between us as they arise as much as
10 possible. And if a business owner were to approach
11 me and ask for some assistance or some advice or
12 some help say like hey, listen, there's this one act
13 that's really driving us nuts or that's really
14 hurting business, I would go to them and I would say
15 hey, look, do you have to be there, like it's really
16 killing these guys, like maybe I can be there and
17 you don't have to be there and maybe we can work
18 something out.

19 Anytime you're dealing with interpersonal
20 relationships sometimes it's always difficult to
21 find middle ground but we try as far as I've seen.

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1 MEMBER KNIGHT: Do you think your
2 self-regulation could maybe contribute to some sort
3 of rotation among yourselves so that the same poor
4 musician isn't playing in front of the same business
5 for days on end?

6 MIKE MUELLER: I would love that. I think
7 that would be terrific. I think that would help --
8 yeah, I think that I could. But again, I'm going
9 back to what I was saying, I think that there need
10 to be an ample number of opportunities. And I know
11 that the one court ruling has made it very difficult
12 for police to say hey, turn your volume down. I
13 guess because of the Bill Hassay ruling or whatever.

14 But let's say there were musicians and
15 let's say they could perform anywhere and not just
16 at the street end, I think a lot of them would take
17 the opportunity to go and not just perform at a
18 street end because there's less competition for
19 those spots. And then they would be subject to the
20 business owner coming out and saying hey, turn it
21 down or you can't be here, you know, and then if

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1 they didn't want to comply and they got ousted from
2 that spot, then they would have to go down to a
3 street end where there would maybe already be
4 artists in place and, you know, we would then have
5 to work out the situation.
6 MEMBER KNIGHT: Thank you.
7 CHAIRPERSON SHOCKLEY: Thank you.
8 Anybody else? All right, thanks. Do you want to
9 speak?
10 MAGGIE MILLER: Yeah, I wanted to make a
11 comment.
12 CHAIRPERSON SHOCKLEY: Can you come up
13 and speak and give us your name?
14 Thanks, Mike.
15 MAGGIE MILLER: Hello. My name is Maggie
16 Miller. I own Somerset Jewelers. Been on the
17 Boardwalk 39 years. I think part of what's being
18 dissolved here, or it seems like to me, is the
19 concern of customers. We have a huge customer base
20 because we've been on the Boardwalk for 39 years.
21 We have people pretty much on a daily basis coming

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1 to us concerned about what's going on on the
2 Boardwalk with all the street performers.
3 One instance I have some girls who were
4 young at the time, a woman who worked for me and her
5 granddaughters used to come for maybe a month in the
6 summer. Well, the girls came this summer, their
7 grandmother passed away and they were here for a
8 memorial. They were appalled because now they're in
9 their 30s and have their own children and they were
10 completely appalled at what was going on on the
11 Boardwalk.
12 They live near Disney. They said you got
13 these grungy Disney characters up there. And they
14 were expressing to me how as children, young girls,
15 maybe 10, 12 years old they were allowed the free
16 run of the Boardwalk with no problems. Never
17 thought something weird might happen or it wasn't
18 scary for the grandparents to let them be there.
19 They said in no uncertain terms would we allow our
20 children to be alone on this Boardwalk.
21 So I just wanted to make the point that

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1 families who have been coming here for years and
2 people who came here as children now are not going
3 to allow their children to be on the Boardwalk alone
4 because they feel it is dangerous and they feel the
5 street performers are invasive. And I just think
6 that we're losing -- Ocean City has always been a
7 family town and we're starting to lose that image
8 because people are now afraid of what's going on on
9 the Boardwalk.
10 CHAIRPERSON SHOCKLEY: Thank you.
11 Questions? Okay. Does anybody else wish to -- you
12 spoke last time.
13 WILLIAM CAMPION: I know. This is on a
14 couple issues today.
15 CHAIRPERSON SHOCKLEY: Keep it brief,
16 please.
17 WILLIAM CAMPION: I certainly will. My
18 name is William Campion, known as the Mad Hatter. I
19 do the balloons. I've been on the Boardwalk for I
20 don't know how many years. I can trace back 10 or
21 12 years with permits. I've been in Ocean City

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1 since '73. I've been performing since I was the age
2 around 12, 13 years old. I've traveled halfway
3 around the world performing. I've performed at
4 Maryland State Fair. I've performed at the Eastern
5 State Exposition which covers all of New England.
6 That's a big one. Montgomery County Fair for many
7 years. I lived in that area. And in and out of
8 most all of the embassies in Washington, D.C.
9 I am a performer. But I am not performing
10 on the Boardwalk in that respect. I do only the
11 balloons. I do nothing to draw them in. I don't
12 call them in or anything else. I just sit there.
13 When they come in, they pick what they want.
14 I've done away with my tip box because
15 I've seen changes on the Boardwalk. I used to come
16 out for 3 or 4 hours a day and go home. Now I have
17 to stay out 8, 10, 12 hours and make half the money
18 I made then.
19 The economy has a lot to do with the
20 income, and I'm sure that is part of the loss for
21 the stores. I'm not saying that the performers

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| <p style="text-align: right;">Page 94</p> <p>1 aren't drawing some money away but the little money 2 we do make really isn't that much of a draw from the 3 stores. However, I did away with my tip box because 4 I was noticing I was getting more and more coins and 5 less and less coins on tips. I now use that as a 6 storage box for my supplies. Now the tips are put 7 in my hand and that solved my problem. Now it's 8 more paper than anything else. But if somebody only 9 puts a few coins in I don't say anything. I say 10 thank you. 11 When you're out there working on tips you 12 take what you get. You don't argue with the people 13 because that's embarrassing. It's unprofessional. 14 I've said it before and I'll say it again, this 15 whole problem started with this big inset of 16 performers on the Boardwalk when we dropped the 17 permit. I think the permits should be here to stay. 18 I think they're invaluable. And I suggest a hundred 19 dollar fee for the season. That's not unreasonable. 20 It benefits the town. It helps cover some of the 21 costs of, to use the expression, policing the work.</p> | <p style="text-align: right;">Page 96</p> <p>1 to move their equipment out. They can't just leave 2 it lay there until their next performance. All 3 right? 4 There was one other thing. Now, I'm 5 81 years old, things don't come out of my head like 6 they used to. But I think if you would rely on your 7 street performers I think you could do a lot more 8 with regulating, as the gentleman said. We observe 9 what's going on and what the public does. I've had 10 people come up and say we were looking for you at 11 Ripley's. You weren't there. We don't come down on 12 this end of the Boardwalk. But we wanted to see 13 you. My children have been getting balloons from 14 you all of these years. I got them when I was 15 young. So consequently they found me down by the 16 restroom. 17 So there is some effect with pulling 18 people down into that area that normally don't come 19 down into that area. That Boardwalk has changed and 20 the crowd has changed. You've got really two 21 different crowds in Ocean City. You got your lower</p> |
| <p style="text-align: right;">Page 95</p> <p>1 And the performer is not going to throw away his 2 investment by doing something stupid. 3 Next, you need to allocate two or three 4 spots on that Boardwalk where you can have, as the 5 other gentleman said, circle performance. These are 6 the unicyclists, other performers that do shows. 7 And I have seen them regulate themselves in front of 8 me. I sat in front of Ripley's for years or 9 alongside of Ripley's but I moved down to the 10 flagpole there between the arcades. When they take 11 the benches out in front of the arcade performers 12 head for that spot. And it works well. They move 13 back a ways after they get a little bit of a crowd, 14 then they'll move back a little farther and it 15 doesn't block the Boardwalk. I've seen them work it 16 out between them, says okay, I've done a show, you 17 can do one. I've seen three or four of them come in 18 there and rotate. 19 Now, one thing you can do is make a half 20 hour minimum on the performances of those type of 21 shows and that will cause a rotation. And they have</p> | <p style="text-align: right;">Page 97</p> <p>1 Boardwalk and then you've got the upper Boardwalk, a 2 different class of people. 3 We have been always a family resort. 4 When Mayor Kelly was mayor he did a lot to clean up 5 a lot of the smut that was on the Boardwalk. I 6 mean, he would go into the store and take the stuff 7 right down. And no, we're not, this is not going to 8 be happening in Ocean City. And it was a family 9 resort. Since he's left I've seen changes come 10 about. The Council has done a good job. They're 11 trying to. But I'm seeing more and more smut on 12 that Boardwalk. I've seen T-shirts that I do not 13 like. I'm a pretty liberal -- 14 CHAIRPERSON SHOCKLEY: Mr. Campion, we're 15 talking about street performers, not -- 16 WILLIAM CAMPION: I'm saying this all 17 comes in hand-in-hand. 18 CHAIRPERSON SHOCKLEY: It does but keep 19 your comments to the street performers. 20 WILLIAM CAMPION: With the street 21 performers, you know, if -- now you're forming a</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 committee here, maybe it would do well to speak to 2 your street performers that have been out here for 3 years when we had no problems and see what they 4 think about some of those acts. Because some of 5 those acts have no business being on the Boardwalk. 6 If anybody's going to perform on that Boardwalk they 7 should not cover their identity. I mean, just not 8 cover their heads up with these costumes and stuff. 9 Keep your face open so we can identify who you are. 10 You need the permit for that so you know who they 11 are. If they're going to wear a costume they need 12 to own that costume, not work for somebody else. 13 They need to own it themselves. That way if 14 something happens, it's their responsibility and 15 nobody else's. We've had a very unfortunate 16 situation. You all know about it. All right. 17 We've all worked together before but with 18 the loss of the permit the Boardwalk just went sour. 19 You've got a mess to clean up and it's not an easy 20 job. But if you'll talk to more of some of these 21 street performers I think you can learn a lot more.</p> | <p style="text-align: right;">Page 100</p> <p>1 came with me. I asked to be grandfathered for I 2 have problems with my skin on my arms and stuff in 3 the sun. So that overhang protected me. And the 4 Council, two of the Council members spoke in my 5 behalf. They said we've seen him. He does a nice 6 job. He's a good representative for Ocean City. I 7 tried to do that but the last couple years I feel 8 like I'm a criminal out there, and that doesn't hold 9 with a lot of us. We did do a lot of work between 10 us helping each other and we worked together. I've 11 asked Jimmy many times come on over with me. Jimmy, 12 you know, and he would do some of his things there. 13 I even throw a dollar in his tip box for him. I 14 usually throw it on the ground and his dinosaur 15 would pick it up and put it in the tip drawer. 16 You got a lot of them coming into town I 17 don't feel belong on that Boardwalk. So there's got 18 to be some way to control that part and I think the 19 cost factor will have a lot to do with it. I think 20 an audition to newcomers coming in needs to be done. 21 And as far as the pole dancer, come on, gentlemen,</p> |
| <p style="text-align: right;">Page 99</p> <p>1 Unfortunately, they're off in other areas. Some of 2 them travel to different areas in the country in off 3 season to Ocean City. They come back in the summer. 4 So we're kind of unbalanced right now. And it's 5 kind of hard to sit here and listen to the stores 6 and everything else. I sympathize with them but I 7 don't think it's all that bad because of street 8 performers. However, this last couple of years have 9 not been normal years for street performers in Ocean 10 City and I think we'll all agree on that. 11 So I think some good ideas came up. 12 Rotation will not work. That will cause more 13 problems because people look for me in a certain 14 area. I do not block anything. I'm in a chair, 15 mobility chair, because I can't stand long because 16 of my military service. I can get out of the way 17 real fast. I try not to cause any problems. When I 18 was removed from Ripley there when they changed the 19 law of the street ends I came to the Council with a 20 letter from Ripley's, with a letter from Sanibel 21 Jewelers, from the owner, and the owner of King's</p> | <p style="text-align: right;">Page 101</p> <p>1 that's a nightclub act. That's not a family thing 2 on the Boardwalk. If she wants to go into one of 3 the night spots in Ocean City or something, that's 4 fine. Not on the Boardwalk. That's not what it's 5 about. And performers that have been on that 6 Boardwalk if somebody said something to us, move, we 7 moved. We don't cause problems with other people. 8 I've seen a violinist get mad because people would 9 stand in front of him and be obnoxious about it. I 10 don't even want to be associated with that kind of 11 person. 12 So you've got a job and a heck of a one to 13 do and I just wish you all the luck on it. And like 14 I said before, please remember us who have been on 15 there for years who have tried to work along and 16 become part of Ocean City and take care of Ocean 17 City. We'd like to continue doing it. I don't 18 think I will much more. I'm hoping this will be my 19 last season if I even go out. Thank you. 20 CHAIRPERSON SHOCKLEY: Thank you. 21 Anybody else wish to say anything? Mark?</p> |

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1 LIEUTENANT PACINI: I had a couple things.
2 CHAIRPERSON SHOCKLEY: Mark, that's a
3 good place to finish. Mark started it. Mark can
4 finish it.
5 LIEUTENANT PACINI: I've been taking some
6 notes with respect to last week's testimony and
7 today. I just need to clarify we're exceptionally
8 safe. It's been referenced here today about
9 molesters and problems with children. We did have
10 an incident, one incident probably 6 or 7 years ago
11 now, and I don't want the citizens to come off with
12 the information that's displayed here today that we
13 are, you know, we have significant problems with
14 that type of problem. So just to make it clear.
15 We brought up a point about rotation and I
16 guess I have a question about, and this is for you
17 guys to mull over, who is going to administer that?
18 And Mr. Mueller probably hit it right on. That
19 could be a lot of work.
20 With respect to the size and the space of
21 the footprint there's two different things you need

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1 to consider there. One is, you know, some people
2 come and bring their tables to display their wares
3 and then there's other people that dance and there's
4 other people that do a moving performance. So
5 limiting it to 5 by 5 or 8 by 5 is something that
6 you need to take a close look at with respect to
7 performers.
8 It was mentioned in the last meeting about
9 the east side versus the west side. This really
10 goes back to the One World incident that we had
11 several years ago. We ended up moving the
12 performers to the east side and the merchants --
13 what I'm trying to say is it went both ways. If you
14 put them on the east side some of the merchants were
15 happy because the persons were walking down the
16 Boardwalk and looked to the business as compared to
17 that they weren't looking away. I'm not being very
18 clear.
19 If the performers are on the east side the
20 people that are walking down the Boardwalk are going
21 to look at the business as they're walking. If the

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1 performers are on the west side you get the
2 complaints from the businesses well, these people
3 are walking down our Boardwalk, our tourists, and
4 they're not looking our way because they're looking
5 at the performers. That's something that you need
6 to consider when you make your decision.
7 Performer insurance -- and a lot of the
8 questions we get with respect to hey, Lieutenant
9 Pacini, why aren't you doing this, why aren't you
10 doing that. I have nothing to do with performer
11 insurance. But I get those questions, just to make
12 you aware and make the public aware.
13 I have not been, and it's been said here
14 today, I have not been made aware of any aggressive
15 panhandling with our performers. I know that it's
16 happened in other jurisdictions and I actually got
17 queried by our attorneys to look at our ordinances
18 and at what you think we might need. And based on
19 their reading nationwide there is issues with
20 aggressive panhandling and we may have to better our
21 ordinance with respect to that.

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1 Mr. Starck talked about putting platforms
2 on the west side of the Boardwalk near the wooden
3 planks out to the beach. I would tell you we had a
4 pretty big circle performer that would probably
5 impede the tramway, just another situation you need
6 to consider when you make your decisions.
7 Someone else here talked about how
8 performers must remain mobile. I think that was Mr.
9 Starck. And that goes back to the old rules and
10 regulations that we used to have that City Hall used
11 to issue. Here's your car and here's the rules that
12 you abide by. One of them was you need to remain
13 mobile. It had no ordinance behind it. It had no,
14 it gave law enforcement no ability to enforce that
15 rule or regulation that City Hall used to give out,
16 just to make you aware of that.
17 I want to mention the suitcase incident
18 with respect to abandoned property just so everybody
19 knows what happened with that. And it did happen on
20 May 28th -- I'm sorry, it wasn't a suitcase. It was
21 actually a backpack that was left on a city bench.

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| <p style="text-align: right;">Page 106</p> <p>1 And I looked at it. I looked at it for about 2 30 minutes. I waited for someone to come back. 3 Let's be aware now, this is a year after the Boston 4 marathon incident. Me as a boss, I'm not going to 5 let one of my subordinates grab it. And myself 6 wasn't going to grab it. So eventually after 7 observing it and realizing that no one was going to 8 pick that bag up for 30 minutes I called the bomb 9 squad. That's why we got them. It's 2015. And 10 it's not long after the Boston marathon incident. 11 So we cleared the Boardwalk and we removed it. You 12 need to be aware of that. We're policing a 13 different age today.</p> <p>14 Let me just clear up the henna issue of 15 what happened this summer, what I believe happened. 16 At first the businesses had their henna personnel 17 and they hired their henna people to work in the 18 stores, and a proliferation of henna stands occurred 19 on the Boardwalk and the people that worked in the 20 businesses realized, one, they were getting beat out 21 and they did one of two things. They left the</p> | <p style="text-align: right;">Page 108</p> <p>1 comment section is closed. The task force now is 2 going to have a conversation about the issues that 3 have been raised and give me guidance in writing my 4 report to the Mayor and City Council.</p> <p>5 So thank you all, thanks everybody who 6 came out and spoke. And like somebody said, we have 7 our work cut out for us. So we'll see what we can 8 come up with. Thank you.</p> <p>9 (Discussion off the record.)</p> <p>10 CHAIRPERSON SHOCKLEY: Now that the 11 public comment is over it's our turn to have a 12 discussion about what we've heard and to give me 13 some advice to move forward. So, Lee, do you want 14 to get started? And just a reminder, it's being 15 recorded and being transcribed.</p> <p>16 MEMBER GERACHIS: You would just like some 17 kind of comments of what we've heard?</p> <p>18 CHAIRPERSON SHOCKLEY: Comments, what you 19 heard that you thought was important and what 20 solutions you think that bear looking at.</p> <p>21 MEMBER GERACHIS: Okay. I did make a</p> |
| <p style="text-align: right;">Page 107</p> <p>1 businesses and opened their own business on the 2 Boardwalk, you know, or performed on the Boardwalk, 3 or, second, they ended up on the Boardwalk being 4 paid by the businesses to perform.</p> <p>5 And then lastly we had the students who 6 got involved and started opening up their own 7 business. So it was kind of a free competition with 8 respect to free trade, and the businesses kind of 9 lost in that battle. And that's, I think that's all 10 I can add for you guys today just to consider.</p> <p>11 CHAIRPERSON SHOCKLEY: Thanks. Any 12 questions for Lieutenant Pacini? Okay. Great. I 13 have something I need to clear up. I misspoke 14 earlier. We only have one more meeting, and that's 15 March 25th where we'll vote on the Chairman's report 16 and vote on amendments. The task force members will 17 receive my report by March 18th so they can review 18 it. And then if anybody wishes to dissent from the 19 task force report or anybody has any dissent to what 20 we've said, it needs to be received by us by 21 April 1st. So that's where we stand. The public</p> | <p style="text-align: right;">Page 109</p> <p>1 little list while we were going through it. It 2 seems generators have to be, you know, approached in 3 some manner or form whether we eliminate them 4 altogether, restrict them to electrical, solar, 5 something of that nature. That seems to be a 6 problem. I agree with it. I think gasoline on the 7 Boardwalk in the middle of summer just doesn't seem 8 like a logical approach.</p> <p>9 I do agree with the 3 feet from the 10 hydrant, keeping the front clear. Maybe 3 feet from 11 the sides. But the front has to be approachable at 12 all times and vacant. I think that would make 13 sense.</p> <p>14 The lottery and the rotation, I agree with 15 it as maybe not the lottery but the rotation in some 16 form because I am subject to performers, you know, 17 day in and day out. If it's the same guy there for 18 a week it does get frustrating. So I think that 19 should be addressed in some form.</p> <p>20 Cordoning off, I don't think they should 21 be allowed to cordon off space. It's public space.</p> |

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1 If somebody wants to walk through it, unfortunately
2 I think they have the right to walk through a space
3 on the Boardwalk also. It shouldn't be cordoned
4 off. Dorchester should be off limits completely. I
5 agree with that.

6 I also thought maybe any street that is
7 flush with the Boardwalk there should be no
8 performers on the west side. They shouldn't block
9 that. Maybe the east side is one thing but if it's
10 the head of a street flush with a Boardwalk, the
11 truck can access it, city vehicle, police, whatever
12 there shouldn't be a performer there that has to
13 move for a truck to get down there. So maybe keep
14 them on the east side.

15 Time limit of some sort. Musical,
16 anything that makes noise after a certain amount of
17 time in the evening should be cut back. You know,
18 there should be a time limit or, you know, so you
19 don't have somebody out 2 o'clock in the morning
20 even if they're playing a guitar and it's not that
21 loud, I think you're going to affect hotel tenants,

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1 people that rent, and residents for that matter.
2 Costume performers -- do you want me to
3 just keep going?
4 CHAIRPERSON SHOCKLEY: Just keep going.
5 MEMBER GERACHIS: And the costume
6 performers, I agree, their face is covered and
7 they're in a full costume, they should have an ID
8 badge. Nowadays you can't go into a bank with a
9 baseball cap and sunglasses. I think there should
10 be some ID if they're covered completely if there's
11 no way to identify them.

12 I'm not sure on the permit thing. That's
13 more legal. That's about it. I've got a few other
14 ones but I think these guys will probably hit it.

15 CHAIRPERSON SHOCKLEY: Mark?
16 MEMBER CHASE: Pretty much I'm in
17 agreement. Costumes, we got to find a way to
18 regulate them but allow people who actually hand
19 craft them. Disney and things up there don't belong
20 at all. But people like Mike who actually creates
21 his own skeleton costume, I call it the pirate, and

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1 a few others that actually hand replicate theirs as
2 their expression, that is one of the things we have
3 to allow in if we're going to ban or even regulate
4 the costumes further.

5 Then of course we just need a thorough
6 definition of what actually a performance is or what
7 visual art is acceptable to be sold. I'm an
8 advocate. I believe that any visual artist should
9 be up there painting. I mean, you're supposed to be
10 performing, entertaining people, not just sitting up
11 there selling. At that point when you're just
12 sitting there selling without the ability to
13 actually paint, you are a business. You're just
14 reselling.

15 Coming down to actually creating or
16 completing the art on the Boardwalk, that comes to
17 an issue of oils and acrylics because they can take
18 days to dry. People start at home, bring it out and
19 painting it live. As long as you're painting it
20 live, you have to be able to demonstrate it's your
21 art and not something you just printed off the

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1 computer and brought.

2 The J-1 issue we heard about from that
3 lady. I got her business card. I'm going to keep
4 in contact with her. But I don't know of any legal
5 way we can actually write it down because it's
6 already a violation of law as it is. It would just
7 be redundant laws that we'd write.

8 The body paint issue. Anything that goes
9 directly on the skin is regulated by the health
10 department inside or outside the store. Outside the
11 store it's going to be one of those issues that is
12 almost unenforceable because it's done by the health
13 department. I think body paint applied to the skin
14 shouldn't be allowed out there because of the
15 dangers. That's pure dangerous.

16 The hennas, they work hair dye, they test
17 it on your skin to make sure no adverse effects.

18 One thing that we didn't touch on is
19 visual artists. We're required in order to sell our
20 art in public to have a sales tax use license. I
21 have one. I know a few other people who actually

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| <p style="text-align: right;">Page 114</p> <p>1 have them. But by the Comptroller of Maryland 2 they're required to have a sales and use license. I 3 don't know how the police department down here could 4 actually enforce it. I think that's out of their 5 jurisdiction. 6 MEMBER KNIGHT: Is that something you 7 display? 8 MEMBER CHASE: You can display it as long 9 as you have it on your person. A lot of visual 10 artists some of them just have portfolios or things 11 like that. But as long as you have it there. But I 12 don't know enforcement aspect who would actually be 13 liable to enforce it, whether it's the Comptroller 14 or whether Lieutenant Pacini actually has out of 15 that jurisdiction. 16 CHAIRPERSON SHOCKLEY: It's the 17 Comptroller. They inspect us. So I mean I'm sure 18 that -- 19 MEMBER CHASE: But I do know we're 20 required to have, or visual artists that sell it in 21 public are required to have it. Caroline Street, if</p> | <p style="text-align: right;">Page 116</p> <p>1 Division, as Mike has brought up, I think we 2 definitely need to reconsider that. In my court 3 case they cited 4 times that the fire truck actually 4 had to enter the Boardwalk in four years. So 5 estimated they actually have to enter that Boardwalk 6 once every 2 years. Is that a viable reason to ban 7 constitutional rights on the street because of once 8 every 2 years? 9 One thing that we saw is when we got rid 10 of North Division Street that forced all those 11 circle shows on to the other streets and that's when 12 a lot of the issues began with circle shows is 13 because we took away the area that they were using 14 and they were forced there. 15 So it's kind of we have to revisit it 16 because I have a CDL license. I know how a fire 17 truck is able to drive. I've driven those size 18 vehicles. I can drive anything over 10,000 pounds. 19 Right now when they rebuilt the bathroom that fire 20 truck can no longer go into the tramway going 21 southbound. It has to be on that Boardwalk. It</p> |
| <p style="text-align: right;">Page 115</p> <p>1 we're thinking about moving the circle shows off of 2 the west side to the east side we have to consider 3 Caroline Street where the bathroom is as a place 4 circle shows cannot be. The congestion between 5 circle shows, the bathroom and the tram someone is 6 liable to get hurt. 7 Dorchester. Ban it. I mean, there's no 8 simple way. They go across 30, 40, 50 times a day. 9 It's just best to have that as a no go zone. 10 CHAIRPERSON SHOCKLEY: How many guys do 11 circle shows? 12 MEMBER CHASE: On average? Probably a 13 good five or six. But occasionally you can have a 14 musician who is good enough to actually draw a small 15 circle. But typically they last a song, 2 songs. 16 Magicians, 30 minutes, 40 minutes or things like 17 that. But there's really not that many circle -- 18 CHAIRPERSON SHOCKLEY: Are you considered 19 a circle show? 20 MEMBER CHASE: Yeah. I'll draw anywhere 21 from 20 to a hundred people at a show. North</p> | <p style="text-align: right;">Page 117</p> <p>1 cannot make that little S turn that they divided it 2 now. The laws there they created back in 2011 are 3 no longer viable. 4 If we are banning Dorchester, we have to 5 consider there's a place right -- we have to 6 consider a place for those performers to go because 7 as you start removing places, if you don't give them 8 other places to go, it's just going to cause more 9 chaos. One of the places that is a no no zone, as 10 we call them, is just north of Ripley's Believe It 11 Or Not. There's a large square where the tram goes 12 up and around the pier but performers because it's 13 not technically a street end are not allowed there 14 even though it's just as viable as any other street. 15 So we might want to consider if we're 16 going to close down Dorchester to open up that area 17 so that those performers have a place to go, because 18 otherwise you're now just compounding the issue of 19 congestion by shutting down without opening up. 20 The lottery, it's just not going to work. 21 It's going to cause more chaos. You're going to end</p> |

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| <p style="text-align: right;">Page 118</p> <p>1 up with performers together that don't work well. 2 As a community we get to know what performers work 3 well together. It's a personality conflict type 4 thing. Just like stores. They get to know what 5 store owners they should talk to, what store owners 6 they shouldn't. It just comes down to working 7 together. 8 The rotation, it sounds great on paper but 9 in practice it's not going to work. It's going to 10 be Lieutenant Pacini with so much more burden. He 11 is now going to have to remember where every 12 performer was on every street for the entire 13 27 blocks of the Boardwalk. That's a lot for 14 one man to try to remember on a daily basis. So it 15 might look good on paper but practicality reasons 16 it's going to be more of a burden for him than I 17 think we should, you know, force on to him. 18 Crowds on to the Boardwalk. I say no more 19 than 50 percent of the Boardwalk should be blocked 20 by a performer or by their crowd. The performer is 21 responsible for their crowd and the crowd that they</p> | <p style="text-align: right;">Page 120</p> <p>1 it's inherently expressive without a utility type of 2 use to it which everything else leads to a case by 3 case situation. At that point if Pacini has an 4 issue with it or Pacini is not sure that's when that 5 performer or artist or whatnot has to actually I 6 would say come in front of the Council and get 7 approval. That way it takes some of the burden off 8 of him. He's able to say this is when the Council 9 meeting is. You have to get approval and you can go 10 back out. 11 By furthering our definition we're going 12 to be able to give him a much more accurate way of 13 doing that rather than 10 o'clock on a Sunday night 14 texting Guy Ayres a picture, "is this right." 15 that is something that's just logical. It's a lot 16 of court cases, especially mine, that says that, 17 that it's a case by case. And that person has the 18 responsibility to come here rather than having a 19 full burden on Lieutenant Pacini to regulate first 20 amendment activity completely. That's a lot of 21 power and a lot of responsibility given to</p> |
| <p style="text-align: right;">Page 119</p> <p>1 generate. If they're blocking 60, 70, 80, a hundred 2 percent of the Boardwalk the police should have the 3 right to either disperse the crowd or have that 4 performer momentarily shut down to disperse the 5 crowd. It comes down to performer responsibility. 6 It's as simple as that. 7 Pacini brought up a thing about weapons 8 that he had confiscated. They ought to be banned. 9 So why a performer was out there with daggers and 10 knives tossing them around, I have no idea. 11 Also in Lieutenant Pacini's book or little 12 booklet there he wanted us to further define what is 13 expressive. One of the key things is books that he 14 specifically wrote down. There are court cases 15 that, I mean, it upholds the sale of poetry, things 16 like that, written by the author and it depends on I 17 guess that you have take case by case scenario. A 18 lot of the issues, the black and the white, aren't 19 case by case type of issues that Lieutenant Pacini 20 often encounters. And even in my own case, my own 21 lawsuit against the city, it distinctly says that</p> | <p style="text-align: right;">Page 121</p> <p>1 one person. He has a family, a wife -- I don't know 2 his history, but he has a home life. He shouldn't 3 have to worry about when he's off hours what's 4 happening out here. That comes down to just us 5 making his life easier. 6 Definitely 3-foot fire hydrant rule. I 7 talked to the Fire Marshal last year. That was 8 definitely a -- that's logical. On the streets cars 9 are required 15 feet but on the Boardwalk 3 feet is 10 adequate because of the size of the street ends. 11 But it shouldn't just be in the front and the back. 12 It's a 3-foot diameter all the way around. So from 13 the fire hydrant itself it's actually a 3-foot 14 radius if you just draw a circle completely around. 15 So it would be a 6-foot diameter total around that 16 center point of the fire hydrant. That allows 17 plenty of movement of the hoses that the fire 18 department use. They bend within 2 or 3 feet 19 typically coming off the ends, so that would allow 20 that type of access. 21 Another thing that the Board book, or</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 Pacini's thing touched on was religious, political 2 and philosophical practices. According to a lot of 3 court case law, they actually have a lot more 4 protection than artistic. In the levels of 5 constitutionality the courts actually look at, as 6 much as they say they don't, they look at content of 7 the message. And the content -- depends on how it 8 falls. Depends on whether it's strict scrutiny, 9 intermediate, things like that.</p> <p>10 Religious, pure religious, political, 11 philosophical, things that are not, you know, 12 actually just out there to take donations or 13 whatnot, they should be able to roam that Boardwalk. 14 That is one of our given rights, basic basic given 15 rights. If you're a preacher and you just want to 16 walk the Boardwalk preaching, that is what the 17 constitution protects. That is one of the most 18 basic things. But if you're accepting donations 19 then you have to be at a street end.</p> <p>20 This would be up to the lawyers, but a 21 clear definition or clear cycle on how citations</p> | <p style="text-align: right;">Page 124</p> <p>1 for generators. But definitely a service log. That 2 way if the Fire Marshal does have issues because 3 he's going to be the one that has to inspect it if 4 it comes to that point, service log, the 5 manufacturer specs, the type of generator, the 6 decibel level, all that should be accessible to him 7 if he ever has to come out and actually inspect 8 that. It comes down to the performer being required 9 to have it.</p> <p>10 And then another issue is unattended 11 equipment. There's a lot of performers that like to 12 show up, especially last year at that henna fiasco, 13 that showed up at 9:00 o'clock in the morning, 14 dropped their stuff and came back 4 hours later. It 15 doesn't matter if you're a magician, an artist, or 16 even if you're just a balloon twister, if it's left 17 there for more than 30 minutes the police last year 18 I know had the authority to take it. It just should 19 be written into law that if it's left there more 20 than 30 minutes it's allowed to be removed. It 21 would be considered abandoned property at that</p> |
| <p style="text-align: right;">Page 123</p> <p>1 have to be given out, whether there's a physical 2 warning, a written warning, citation, dollar amount 3 and so forth. That was one of Lieutenant Pacini's 4 concerns was how he has to have that done.</p> <p>5 Generators have to be able to be moved by 6 hand. I go by the practice of safety so I fuel my 7 generator about 2 blocks off the Boardwalk, 8 actually. I have my apprentice actually put it on 9 the dolly and we take it well away from people. 10 That's why I was kind of wondering on the footage. 11 But 80 decibels and about 50 pounds on the 12 generator, that allows it to be held, that allows it 13 to be ultra quiet. And the fueling of generators 14 definitely have to be off the Boardwalk to the west 15 side. They cannot be fueled on the beach. Then 16 that means you have to bring that fuel canister. 17 Fuel canisters themselves are not allowed to stay on 18 the Boardwalk.</p> <p>19 The generator itself at least 5 feet, 3 to 20 5 feet away from contact with a person. Then it's 21 going to come down to a lot of different regulations</p> | <p style="text-align: right;">Page 125.</p> <p>1 point.</p> <p>2 I think that's about it.</p> <p>3 CHAIRPERSON SHOCKLEY: All right. Thank 4 you, Mark. Frank?</p> <p>5 MEMBER KNIGHT: I'll just try to hit on 6 some things that haven't been covered, but the first 7 thing I want to address is that on page 4 and 5 of 8 Lieutenant Pacini's Boardwalk Task Force pamphlet 9 question 3 number H is a bunch of specific 10 enforcement issues that he would like addressed by 11 this task force. I won't read them all but in 12 writing up the thing I think he would like to have 13 answers to the questions on page 4 and 5 here.</p> <p>14 As far as what I've been looking up, 15 without hitting on repeating things, I think there 16 should be permits, some sort of permitting process 17 for performers. They would be good for 1 year. You 18 could apply for them by May 1st of one year. They 19 would expire on May 1st of the next year.</p> <p>20 I think when you perform there should be 21 an ending time. I don't think you should be allowed</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 to perform until 2 o'clock. I think the noise 2 should end at a reasonable hour to be determined. 3 They have to keep their area clean. Along 4 with Mark, I don't think they should block more than 5 a certain percent of the Boardwalk. I think it 6 would be a maximum of 30 to 50 percent. 7 I think the police should have the 8 authority to disperse anybody that's blocking more 9 than that. They should have the right to ask the 10 performer to cease his performance for a few minutes 11 until people disperse if that doesn't work. 12 We were asked to nail down the existing 13 noise ordinance as it pertains to the performers. I 14 think that has to happen. 15 I think looking at other cities there 16 should be a minimum distance between performers. It 17 was usually 10 feet. 18 As Mark said, they should collect and 19 remit all applicable taxes. 20 And as Mark also said, we need a 21 definition of what art is and what a performance is.</p> | <p style="text-align: right;">Page 128</p> <p>1 determine what the fire hazard is. I personally 2 don't like having gas generators out there. 3 The touching of skin I think should be 4 banned as in the henna tattoo, the hair braiding, 5 face painting. 6 Spray painting is allowed as long as 7 there's a wind screen and ground cover. That's 8 every place I read you're safe. You're good, as 9 long as you don't implicate the property next to you 10 or something like that. 11 I don't know if we can determine a 12 footprint. I know Mark couldn't exist with 5 by 5. 13 That's what seems to be in a lot of cities a 5 by 5 14 use, even for spray painters. For other performers 15 it seems to be a 4 by 4 area, it's a limit of 16 something 6 feet high. They have one chair. And if 17 they're a henna person or a sketch person they have 18 one folding chair for their customer. 19 Naturally, no alcohol with the performers. 20 They can only leave their space for a 21 certain number of minutes. They can't, you know, to</p> |
| <p style="text-align: right;">Page 127</p> <p>1 I definitely think after hearing some of 2 the testimony that there should be some sort of 3 insurance these folks have, and it would have a hold 4 harmless clause for the city to release the city 5 from any liability, a minimum of \$300,000. And it 6 was suggested in various cities that group policies 7 could be permitted where the performers could get 8 together and take out a group policy. 9 The lottery I don't think is going to 10 work. 11 The rotation system, unless they do it 12 themselves, unfortunately I don't believe is going 13 to work. Like Mark said, you can't come out in the 14 morning and reserve your location, put down your 15 rope, put down your cones, put down your chair and 16 table and then just leave. 17 You can't leave unattended backpacks, 18 suitcases, different things that performers would 19 carry their wares in. 20 Again, other cities legislate against fire 21 hazards. It's up I guess to the Fire Marshal to</p> | <p style="text-align: right;">Page 129</p> <p>1 go to the restroom or whatever but they can't just 2 like bail out for an hour or two and leave their 3 stuff unattended. 4 No stages or platforms up there on the 5 Boardwalk. 6 A minor performer should have a 7 responsible adult with them. A minor performer 8 shouldn't be allowed to perform by themselves 9 unattended. 10 And they should have no more equipment 11 with them than can be removed in 3 minutes. I think 12 somebody said that at some point. That seems to be 13 something that a few city ordinances that they have 14 to be able to clear out all their stuff within 15 3 minutes and carry it themselves. 16 And the one idea I did like from Mr. 17 Campion was the pad between Playland and Sportland I 18 think could be used. The pictures I saw that 19 Lieutenant Pacini presented showed a large open 20 space there with a street perform performing and the 21 crowd is off the Boardwalk. And you could rotate</p> |

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1 three or four shows there every hour. If that could
2 be worked out I think that would be a good place. I
3 don't know if any other street ends would be
4 applicable but that street end would be.
5 That's about all I've got right now.
6 CHAIRPERSON SHOCKLEY: Okay. You talked
7 about the performer's responsibility for the crowd.
8 MEMBER CHASE: Yes.
9 CHAIRPERSON SHOCKLEY: It's a lot easier
10 if the performer does it than if the police does it.
11 MEMBER CHASE: Exactly. It comes down to
12 personal responsibility.
13 CHAIRPERSON SHOCKLEY: Right. So there
14 has to be some mechanism for them to let the
15 performer know that they have a problem and they
16 have to disperse their crowd because as soon as they
17 wade in, there's somebody who is going to give him
18 some guff about it. So if the performers do it,
19 it's not as obtrusive to people watching the show.
20 MEMBER CHASE: Yeah.
21 CHAIRPERSON SHOCKLEY: Bob?

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1 MEMBER ROTHERMEL: I guess most of my
2 comments are based upon fairness. And from personal
3 experience as an event producer I come to the city
4 and we get special event permits, we have to pretty
5 much outline who we are, what we've done, and then
6 show insurance.
7 So for me, then it becomes where do you
8 draw the line between, or when does freedom of
9 speech become a commercial enterprise? And I have
10 problems just getting my arms around that. I'm not
11 an attorney, nor did I sleep in a Holiday Inn last
12 night.
13 But then you look at the zoning issues,
14 you know, in order to be a commercial enterprise you
15 have to ascribe to certain zoning standards which
16 don't seem to apply to the performers or the buskers
17 or whatever you want to call them, whether they're a
18 vendor or they're a singer or a pole dancer, it
19 doesn't matter.
20 So I still have issues with that, how to
21 make that the equal protection of the law is for

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1 everyone. So that being said, I heard a lot about
2 insurance and I just can't imagine that we allow, as
3 a community we allow anyone to conduct business in
4 any way, shape or form without any kind of
5 insurance.
6 The amplification, I just think we ought
7 to get rid of any kind of amplification of anything
8 on that Boardwalk. All the businesses have to abide
9 by certain standards for noise, so why can't these
10 entertainers or the performers or the vendors have
11 the same kinds of issues.
12 I can't imagine in a perfect world
13 where -- well, let's not go there.
14 The generators, I think we just ought to
15 get rid of them. I think the idea of having an
16 internal combustion generator is problematic,
17 whether it's gas or diesel the fueling of it is a
18 problem. I hear you taking your precautions, and
19 that's great, but that generator just creates more
20 issues than I think it needs to have.
21 The taking of, again back to the fairness,

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1 the taking of money as a commercial enterprise and
2 charging a fee for a product when other businesses
3 in this town can't do that. So where is the equal
4 protection of the laws?
5 I heard a lot about rotating. I heard
6 about a lottery. I just don't know how that would
7 work. It just seems to put another layer on things
8 that you don't need to put on and how would the
9 police then know who was going to go where. But by
10 the same token I think there needs to be some kind
11 of a permit for people to be on the Boardwalk
12 because we ought to know who is there. We ought to
13 know who has a criminal record and who doesn't have
14 a criminal record, or whatever type of record it is.
15 The costume characters, again from my
16 personal perspective if I wanted to have a costume
17 character at one of our events we would have to pay
18 a licensing fee to someone to have it. And I'd just
19 rather get rid of any kind of a costume character up
20 there. If it's a homemade deal I can see that, the
21 guy that's the pirate, entertaining, but it only

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1 takes up a couple of square feet. The guy that
2 paints himself gold only takes up a couple square
3 feet but he draws a bigger crowd. I don't know if
4 you call him a circle --
5 MEMBER CHASE: Yeah.
6 MEMBER ROTHERMEL: -- or not but I don't
7 know how you would define what's a circle and what's
8 not. Is it the crowd that you draw? I've seen the
9 magician, the guy doing magic tricks up there and he
10 has a big crowd but he also has them far enough away
11 from him.
12 So the circle shows, I have an issue with
13 circle shows just because of how much space they
14 take up and that they block the Boardwalk.
15 I have issues with the hennas or the
16 painting, you know, I see in these other
17 jurisdictions where they say if you're touching
18 someone, that's no good whether it's a hair wrap or
19 a painting or hennas. I can see that coming into
20 play.
21 The access, I live on Dorchester Street so

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1 I know what goes on on Dorchester Street, and the
2 gentleman said look, tractor trailers run across
3 that Boardwalk all day. Well, do you know what?
4 They pay people to block the traffic so the
5 tractor-trailer people can go across. The Beach
6 Patrol doesn't have that luxury.
7 I agree with Lee. I think anywhere where
8 you have access to the Boardwalk for an emergency
9 vehicle you should just knock that out of play.
10 And to your point of only a couple
11 vehicles have crossed the Boardwalk over a couple
12 years, do you know what? There's plenty of stores
13 and businesses in this town that are required to
14 have sprinkler systems and they've never popped.
15 It's that one time you need it, that's when you need
16 it. And so anywhere that you have access on the
17 Boardwalk I think we ought to take that out of play
18 for any kind of performance.
19 I saw some other information from other
20 jurisdictions where they were only allowing
21 performers or vendors at certain times of the day.

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1 At a certain time they had to leave. I kind of like
2 that idea. But again the evening hours are going to
3 be more profitable than the daylight hours but is it
4 really freedom of speech that's being protected or
5 is it freedom of commerce that we're protecting?
6 I think that's about all I wrote down.
7 But I think there's, we certainly have seen
8 consensus here. We certainly -- clearly there's an
9 issue and it's become almost capitalism amuck out
10 there. But then again, it's capitalism. It's not
11 freedom of speech. And that's where I have a hard
12 time getting my arms around is where do you draw
13 that line and how do you draw that line, and can we
14 draw that line.
15 CHAIRPERSON SHOCKLEY: Anybody have
16 anything else? Ill just, all the stuff has been
17 very enlightening and I think one of the best things
18 that's come out of it is people have got to express
19 themselves about it. There was a pent up
20 frustration and, I mean, it was going nowhere and
21 getting ugly and the henna situation last year was

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1 an example of that. And you guys have talked a lot
2 about self-regulation and one of the things that may
3 work is have some form of committee of you guys with
4 a police officer, with a business person, and with a
5 couple of you guys.
6 And I think, I mean that may address the
7 situation of like Jackie from Park Place or the guys
8 that sit in front of you every day. I mean, we can
9 go say something to them but it means more coming
10 from you guys, and you guys can accommodate the
11 movement. And I think that that's something that, I
12 mean, I'd like to see come out of this. It will
13 stave off some of these problems ahead of time and
14 it probably would have stopped what happened with
15 henna last year if there was some mechanism to deal
16 with the issues that arise right away.
17 But other than that, I mean, we got a lot
18 of information and we'll go over it and I will
19 prepare a report for you guys and you'll get it
20 March 18th. I appreciate your time. Anybody have
21 anything else?

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1 MEMBER ROTHERMEL: It's been fun.
2 CHAIRPERSON SHOCKLEY: It has been
3 interesting. Motion to --
4 MEMBER ROTHERMEL: You mentioned about
5 Caroline Street. I just want to echo. And you said
6 about 10 feet away from each other or some kind of a
7 guideline. All the times that we were on the
8 Boardwalk doing events last summer and you walk
9 between in front of that Caroline Street comfort
10 station there would be three or four different
11 people, you know, performing, whether it's music or
12 art or whatever. And it was like, you know, a
13 sensory overload when you walked through there, and
14 I don't know how anyone can even enjoy being on the
15 Boardwalk in that block.
16 So some kind of breaking apart of, you
17 know, keeping them farther apart, more than 10 feet.
18 But it was mind numbing to walk through that area.
19 And I was passing through. Can you imagine if you
20 had to stay there?
21 MEMBER CHASE: I know the long-winded Mike

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1 that set up here forever he brought up the idea of
2 like musicians that are actually able to go in
3 between. What happens if we make it so that if it's
4 hand-held unamplified vocals and unamplified
5 instruments that they can actually interchange
6 between wherever they want. That way they're not
7 stuck at a street corner or they can just like free
8 range as they want.
9 One hour they might sit here. They might
10 go grab a bite to eat and go to a different street.
11 But if they're stuck like with those type of people,
12 musicians, if they're stuck at the street end
13 because that's where they have to be they're more
14 liable to stay there all day long. But musicians,
15 their voices tire out and eventually they want to
16 take a break. So they might leave, go to a
17 different street. If we allow them if it's
18 hand-held, unamplified vocals and unamplified
19 instruments from you guys as business owners --
20 MEMBER GERACHIS: Well, it's more a
21 property owner. I think then they're directly in

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1 front of you. At the head of the street at least
2 they're facing the street. I think once you start
3 getting back into -- I think you're going to run
4 into problems again.
5 MEMBER CHASE: Yeah. I just wanted your
6 input on that.
7 MEMBER GERACHIS: Then they're directly in
8 front of your deck. They're in front of my porch.
9 It's the whole --
10 MEMBER ROTHERMEL: It's the same thing.
11 If you're on the street end, you know, there's
12 hotels on corners, properties, and you get the same
13 problem wherever it's going to be.
14 MEMBER GERACHIS: It also limits the
15 number because once you open up the blocks
16 proliferation is going to be, you know, it's viral.
17 MEMBER ROTHERMEL: Right.
18 CHAIRPERSON SHOCKLEY: Mark, do you have
19 something?
20 LIEUTENANT PACINI: Just a couple things.
21 My experience with respect to crowds on the

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1 Boardwalk the worst night is Saturday night. That's
2 the night where we get the most complaints. And
3 Dorchester Street, North Division which is not an
4 issue now and also at 4th Street the tram has to
5 turn from the concrete. If you have a performer
6 right there at that street there, it just causes
7 problems. So just to make you aware of that when
8 you go to make your decision.
9 The area just north of Ripley's that's
10 where the tram turns. I don't think that's a viable
11 option. It did have a very large band congregate
12 there last year, it was a busy night, and it caused
13 a lot of problems and it caused a lot of issues from
14 the merchants of course.
15 One thing about the fire hydrants I don't
16 think we're catching is stationary versus a moving
17 performer. If you got a crowd we don't want to be
18 moving performers away from the fire hydrant. I
19 want to clear that up. That became an issue last
20 year. A merchant screamed about us being in front
21 of the fire hydrant. I ended up getting my younger

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| <p style="text-align: right;">Page 142</p> <p>1 officer involved and all of a sudden now we're 2 moving strollers away from the fire hydrant which we 3 want to stay away from. 4 We talked about minors. During June 5 that's all we have here is minors. Everybody that's 6 under the age of 18. I've seen some ordinances 7 that, you know, when you're a certain age you need 8 to have a parent with you. 9 And the amplification issue became an 10 issue when I wasn't up working on the Boardwalk 11 during the summer, and I don't know how it ever 12 became. I know originally it was original rules 13 that I told you about that were passed out when you 14 came to give your permit it said no amplification. 15 And the last five years that I wasn't up there, when 16 I was working the criminal division now that became 17 an issue. I don't know how that came about. And 18 80 decibels I think is way over the -- I don't know 19 what our decibel is but I think 80 is too high. 20 CHAIRPERSON SHOCKLEY: Bars can't be at 21 80.</p> | <p style="text-align: right;">Page 144</p> <p>1 CERTIFICATE OF REPORTER 2 3 4 5 I hereby certify that the foregoing is a 6 true and accurate transcript of the proceedings in 7 the aforementioned matter. 8 9 10 11 12 13 14 _____ 15 Alfred A. Betz, Court Reporter 16 17 18 19 20 21</p> |
| <p style="text-align: right;">Page 143</p> <p>1 LIEUTENANT PACINI: I know right. Sure. 2 CHAIRPERSON SHOCKLEY: All right. 3 Thanks, Mark. Anything else? Motion to adjourn? 4 MEMBER KNIGHT: Motion to adjourn. 5 CHAIRPERSON SHOCKLEY: Second? 6 MEMBER GERACHIS: Second. 7 CHAIRPERSON SHOCKLEY: Thank you, guys. 8 (Proceedings concluded -- 3:47 p.m.) 9 10 ----- 11 12 13 14 15 16 17 18 19 20 21</p> | |

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OCEAN CITY, MARYLAND
RESOLUTION 2015-1

In re: Mayor and City Council of Ocean
City, Maryland Resolution 2015-1 entitled, "A
Resolution Establishing a Task Force to Study the
Issues Regarding Boardwalk Regulation."

HEARING

Wednesday, March 25, 2015

1:00 p.m.

City Hall, Ocean City, Maryland

Reported by:

Alfred A. Betz, Court Reporter

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1 P R O C E E D I N G S
2
3 CHAIRPERSON: Good afternoon. The process
4 for today is reviewing the report and here's how
5 we'll proceed. Each task force member has received
6 the draft task force report about a week ago. I
7 will summarize the major recommendations of the
8 draft task force report and then ask each of you to
9 either speak in support of the report as written or
10 to offer amendments to the report. I will keep a
11 list of all the proposed amendments and after every
12 task force member has spoken we will vote on each of
13 the proposed amendments. A majority vote will
14 determine whether an amendment is accepted.
15 After we have voted on every proposed
16 amendment I will ask for a vote on whether to adopt
17 the report as amended. If no amendments are
18 proposed or none are adopted this group will vote on
19 whether to adopt the current draft task force report
20 as is.
21 As a reminder, any task force member who

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1 wishes to submit a written dissent to the report we
2 adopt today may do so by April 1st, 2015.
3 Soon I will present the final task force
4 report consisting of the report as adopted today, as
5 of today's meeting, plus any dissents in a timely
6 received manner to the Mayor & City Council. We
7 cannot go through the entire draft report, as you
8 guys realize. I will summarize the major proposals
9 of the report; however, they include recommendations
10 that we will get sent to the Mayor & City Council
11 and then from there the Mayor & City Council will do
12 as they please, whether they draft an ordinance or
13 do whatever. But this is just our recommendation to
14 the Mayor & City Council. We aren't here to draft
15 an ordinance today.
16 So in summary in the report we've
17 attempted to provide a clear definition of
18 expressive material, performer, and performance.
19 They're included in the report.
20 Second, we've attempted to designate
21 spaces for expressive activity in the most congested

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1 areas of the Boardwalk and make the spaces available
2 to individuals who register for their use on a
3 weekly basis.
4 The draft report includes the recommended
5 regulations for implementing that practice.
6 Designated spaces would not be established
7 outside the most congested areas of the Boardwalk so
8 that expressive activity could occur on the
9 Boardwalk on most street ends with a prior
10 registration.
11 We've attempted to facilitate emergency
12 access to the Boardwalk by prohibiting expressive
13 activity on Dorchester Street in addition to North
14 Division Street.
15 We also attempted to facilitate and
16 promote street performer use of Caroline Street
17 amphitheater during designated times.
18 We've attempted to implement, or suggested
19 reasonable restrictions on time, noise, height and
20 affixing props to the Boardwalk and leaving
21 unattended equipment in performance spaces.

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1 We've also established a rule that
2 expressive activity can be conducted on the
3 Boardwalk from 10:00 a.m. to 12:00 a.m. on week
4 nights and from 10:00 a.m. until 1:00 a.m. on
5 weekends, with no amplification of sound after
6 10:00 p.m. during the week and 11:00 on the
7 weekends.
8 There's also a prohibition to affixing
9 props to the Boardwalk. There is a height
10 restriction for props which is 4 feet. There is a
11 prohibition on the use of generators by individuals
12 engaging in expressive activity on the Boardwalk.
13 And there also is a prohibition on leaving equipment
14 or props unattended in any performance space for
15 more than 15 minutes.
16 The report also authorizes the Ocean City
17 Police Department to enforce all the Town's codes
18 and ordinances with respect to the Boardwalk both
19 existing and the newly recommended one through civil
20 fines and giving the police officers the power to
21 evict street performers from the spaces for up to

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1 24 hours if they fail to comply with the new
2 Boardwalk regulations.
3 With that said, we'll just go one by one
4 and you can make your comments upon the report or
5 offer any amendments. As I noted, I will take down
6 the amendments and we'll vote on them after each has
7 spoken. So Lee, do you want to lead off?
8 MEMBER GERACHIS: One recommendation I
9 might make is maybe more access streets, prohibiting
10 players there, or performers. You know, you don't
11 have to do all the streets that meet the Boardwalk
12 but I think maybe some more northern streets so, you
13 know, if a vehicle has to get up on the Boardwalk
14 for whatever reason they don't have to go all the
15 way down to Dorchester and know that they're clear.
16 So maybe one or two more streets north of that might
17 be acceptable.
18 The amplification of music ending earlier,
19 I agree with that. But is there some cutoff?
20 You're going to let people play music until 1:00 in
21 the morning, I think this current thing may be a

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1 little lower.
2 MEMBER KNIGHT: 1:00 on the weekends.
3 MEMBER GERACHIS: Yeah. I think that's
4 pretty late in some of the areas, especially up to
5 the Boardwalk, you know. Even past 10th Street
6 where it's mostly residential. That's my
7 recommendation.
8 CHAIRPERSON: All right. So you'll add
9 more streets, restrict --
10 MEMBER GERACHIS: More streets, maybe for
11 access, and maybe adjust the times accordingly, you
12 know, in certain areas. Maybe even north of, you
13 know, a certain street. Maybe it's earlier.
14 And then on reading this am I clear that
15 the boxes you're talking about delineating are on
16 the west side?
17 CHAIRPERSON: Yes.
18 MEMBER GERACHIS: And nothing would be on
19 the east side, correct?
20 MEMBER CHASE: I think you mean reversed,
21 because west side is where the stores are.

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1 MEMBER GERACHIS: I think that's what this
2 is reading.
3 CHAIRPERSON: The town will decide. My
4 understanding is that Terry and in all likelihood
5 Hal and the police department have been tasked with
6 laying out where these boxes will be along the
7 Boardwalk. So some will be --
8 MEMBER GERACHIS: Okay.
9 CHAIRPERSON: -- on this side and some
10 will be in the median, and it will be based on their
11 judgment of what it will be like to have the
12 entertainer there and what the traffic issues will
13 be.
14 MEMBER GERACHIS: Okay.
15 CHAIRPERSON: So when the City takes up
16 this issue they will have a detailed plan of where
17 the boxes are.
18 MEMBER GERACHIS: All right. And then I
19 think you said something about the week long? You
20 go ahead.
21 MEMBER ROTHERMEL: I would concur. I

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1 would think any access to the Boardwalk, any ramp to
2 the Boardwalk that has, can offer emergency vehicles
3 to get on to the Boardwalk is important. So not
4 just one or two, I think all of them should --
5 MEMBER GERACHIS: I would like all of
6 them.
7 MEMBER ROTHERMEL: I think it should be
8 all of them. I mean, it's no less important up
9 the, you know, up the Boardwalk as it is down the
10 Boardwalk. However, down the Boardwalk you can get
11 right on to the beach easier than getting through
12 that wall.
13 CHAIRPERSON: What streets?
14 MEMBER GERACHIS: Third Street?
15 MEMBER ROTHERMEL: Third Street is one I
16 was thinking of.
17 MEMBER GERACHIS: Street level. Third
18 Street, Fifth Street I believe is. Sixth is a
19 dropoff. Seventh Street is street level. Surf
20 Avenue. And then Ninth Street but that's blocked by
21 benches.

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1 MEMBER ROTHERMEL: I don't think you can
2 get on there. But anywhere up and down that
3 Boardwalk.
4 CHAIRPERSON: Got it.
5 MEMBER ROTHERMEL: I also think 10 by 10
6 is just way too big. That's too much real estate to
7 give up. If we're trying to create a free flow of
8 traffic on the Boardwalk for our pedestrians 10 by
9 10 is way too big. I was thinking 5 by 5. But
10 that's something we can discuss.
11 I'm concerned about weekly licenses,
12 permits. I think having the same performer, one of
13 my beefs has been having the same individual in
14 front of the same place all summer has been an issue
15 and I think all week long is an issue. I mean,
16 people come down and rent for a week at a time and
17 they would be subject to the same individual every
18 night, and I think that becomes problematic, in my
19 mind. I'd rather see that reduced. I mean, I saw
20 somewhere in a community they did it every hour. I
21 don't know how that managed, but getting it down to

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1 one day every other day or something like that,
2 something that gets a little bit more variety going
3 so you can move them around a little bit more.
4 I'd rather see no amplification at all. I
5 mean, when we had our restaurant on Talbot Street
6 and we had outdoor entertainment we had to stop at
7 11 o'clock every night because we had a liquor
8 license and they didn't want the music playing in
9 the residential area. And I don't see any reason
10 why this should be any different. You know, 11
11 o'clock should be the cutoff. You got motels,
12 hotels and condominiums all along that Boardwalk and
13 there's no reason they shouldn't be subjected --
14 they could close their doors but it doesn't always
15 solve the problem.
16 So, no amplification. I'd rather see it
17 reduce all the time to 11 o'clock. And I can't
18 figure out who would manage this. It seems like
19 we're dumping a lot on City Hall with this thing and
20 saying they got to -- you can see Monday morning
21 there will be a line out the door looking for

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1 permits. I don't have a solution to that but I see
2 that as being problematic.
3 The biggest thing that I have is being
4 equitable, you know. We got to maintain our tax
5 base. We got to maintain the integrity of our
6 zoning laws. We got to maintain the integrity --
7 for God's sakes, the City licenses people to vend on
8 the beach and here it becomes like the wild west on
9 the Boardwalk. And, you know, the retail stores
10 have rules and regulations and insurances they have
11 to abide by. The people that are on the beach have
12 to. We have an ordinance that says you can't vend
13 within 75 feet of the Boardwalk. And here that
14 strip of Boardwalk for some reason becomes the wild
15 west. There has to be fair and equitable treatment
16 to everyone in order for this thing to make sense to
17 the public to get buy-in.
18 CHAIRPERSON: Okay. So to summarize, you
19 two, I mean, you want to look at every street that
20 has access to the Boardwalk being curtailed. And
21 then your time adjustments.

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1 MEMBER GERACHIS: I think earlier I'd like
2 no amplification --
3 CHAIRPERSON: At all?
4 MEMBER GERACHIS: I'd like no
5 amplification, yeah. I'm with you on that one.
6 CHAIRPERSON: What hours are you guys
7 suggesting?
8 MEMBER GERACHIS: Not one o'clock.
9 MEMBER ROTHERMEL: Yeah. I'd say 11
10 o'clock. That was the deal when we had that
11 restaurant on Talbot Street. We couldn't have
12 outdoor live entertainment after 11 o'clock.
13 CHAIRPERSON: And the liquor board seems
14 to hold to that 11 o'clock rule. Okay. And on the
15 weekends, same thing?
16 MEMBER ROTHERMEL: Yeah, I would.
17 CHAIRPERSON: Okay. And you're also
18 suggesting boxes 5 by 5?
19 MEMBER GERACHIS: Or even narrower.
20 CHAIRPERSON: I think what we'll -- well,
21 my sense is that 10 by 10 would be the max. I think

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1 they'll go to street ends and find that some street
2 ends won't accommodate a 10 by 10.
3 MEMBER GERACHIS: I think you end up in
4 the bus lane on a lot of them that way, don't you?
5 CHAIRPERSON: Yeah. That will be, I mean
6 we can set it at 5 by 5 but right now it's 10 by 10.
7 I don't think you'll see 10 by 10 in all the areas,
8 and that will be a task of the City engineering
9 department to lay out and then also when they lay
10 the box out to see where the box falls. If it falls
11 into the tram right-of-way they'll have to make that
12 adjustment. And it could be as small as a 3 by 3
13 box because there are street ends that won't
14 accommodate two ten by tens but they may accommodate
15 one ten by ten and one three by three which clearly
16 would be a place where a solo guy could work.
17 MEMBER ROTHERMEL: Do we want to have
18 multiple performers in one street end? I think it
19 should be just one per so that it spreads them out
20 because sometimes when you walk down the Boardwalk,
21 I mean, it's like sensory overload.

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1 MEMBER CHASE: I think one way to actually
2 solve, there's a lot of concern about that, if we
3 allow the City to even three by three, five by five,
4 the average street end in the south end is right
5 around 30 feet wide, if you do the math you're
6 putting anywhere from three to even a five by five,
7 you could put six there. I think the logical
8 explanation would be two on the east side, it can't
9 accommodate more than 40 percent of that area on the
10 east side, and one on the west side and you can only
11 like no stage shows, no circle shows on the west
12 side. That would limit it down to only three
13 possible per street end. I think that would
14 accommodate a lot of the --
15 MEMBER ROTHERMEL: Well, I think there
16 should be one per street end, period, whether it's
17 on the east side or the west side because it's not
18 just the performer space, it's what they draw, and
19 it's what they draw is what causes the problems with
20 the retailers and moving people and trams up and
21 down the Boardwalk. Maybe the space should be 30 by

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1 30 and there's only one person in the middle of it
2 and that solves the problem for the crowd.
3 MEMBER CHASE: That definitely solves a
4 lot of the issues. But it comes down to one space.
5 We got roughly 27 streets. You're going to
6 eliminate a lot of expressive material that way.
7 It's bound to be spontaneous just like the people
8 who come down to stay inside your hotel rooms, some
9 of them I guarantee you bring a guitar because
10 that's one of the draws of Ocean City is being able
11 to just go out and strum and just to play, even if
12 you're collecting no tips.
13 MEMBER ROTHERMEL: We all wouldn't be here
14 if that's all it was. It's become a commercial
15 enterprise and that's what we're trying to figure
16 out, how to make this thing be the, to solve the
17 constitutional question that's before us is what is
18 expression and what is commercialization. And I
19 guarantee you everyone is up there because they can
20 make a dollar.
21 MEMBER CHASE: Oh, yeah.

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1 MEMBER ROTHERMEL: Not because they're
2 coming down here to strum a guitar.
3 MEMBER CHASE: But I rather say rather
4 than doing a set five by five it's much more logical
5 because then you can apply, like percentage-wise you
6 can apply that to each street universally. No more
7 than 40 percent three feet away from the fire
8 hydrant. That would limit only two performers
9 pretty much per street on the east side all the way
10 up and down. And then that would basically allow
11 rather than having the line of people out here at,
12 you know, Monday morning getting permits, if
13 Lieutenant Pacini knows that you're only allowed
14 two, leave it as first come first served. That's
15 kind of like one of the obstacles. I mean, it's a
16 lot of performers to know who works best next to
17 each other. Instead of signing up and the next
18 thing you know is you have two musicians or you have
19 two acts that just don't work together.
20 MEMBER ROTHERMEL: I don't trust that
21 they'll take that into their own stead. I've seen

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1 it where you got dueling guitars and it becomes
 2 sensory overload going down. I don't think they're
 3 going to manage themselves that well.
 4 MEMBER CHASE: Overall we typically do.
 5 CHAIRPERSON: I mean, we'll have competing
 6 amendments on that, I think, and I think ultimately
 7 it will be up to the City to decide the size based
 8 on the street ends and the width of the street end,
 9 the boxes that are created on each street. Because,
 10 I mean, we can sit there and say you're going to
 11 have two or four per thing and they'll go out there
 12 and find a fire hydrant and we'll be back. So it's
 13 best if the City determines that based on their
 14 actual look at it. So you have, I mean, you spoke
 15 of the weekly rotation.
 16 MEMBER ROTHERMEL: I would rather see it
 17 go down to a shorter period of time, not be a weekly
 18 or, you know, one or two days, you can't be in the
 19 same place. But I don't know how you manage that
 20 either but I just know that, you know, if it's a
 21 great performer everyone will love it being out

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1 there. If it's not a great performer and they're
 2 still expressing their art, you know, no one's going
 3 to sit there all week and pay Boardwalk rent and
 4 listen to that. So I think you got to narrow the
 5 length of time.
 6 And the one big one I have everyone who is
 7 on that Boardwalk needs to have insurance. We may
 8 put up a sign as it's inferred in here to disavow it
 9 but we're creating a venue and now we're becoming
 10 part of it. And if someone trips over something and
 11 wants to sue someone, who are they going to sue?
 12 They're going to sue the City.
 13 MEMBER CHASE: If we had the registration
 14 I would say a million dollar insurance.
 15 MEMBER ROTHERMEL: Boardwalk merchants
 16 have to have insurance on their sign to hang on the
 17 Boardwalk.
 18 MEMBER CHASE: Just out of curiosity, what
 19 are you guys insurance-wise required to carry?
 20 MEMBER ROTHERMEL: I mean, a million
 21 dollars is nothing anymore.

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1 MEMBER CHASE: Yeah, I know, but.
 2 MEMBER ROTHERMEL: Five and then an
 3 umbrella on top. You know? I mean. A million
 4 dollars, I can't imagine it would be, a million
 5 dollars would be reasonable for what we're doing
 6 here but a million dollars isn't a lot of money when
 7 it comes to health care anymore.
 8 MEMBER CHASE: But we would have to have
 9 some kind of -- we can leave that up to the Board.
 10 MEMBER ROTHERMEL: The City has, you know,
 11 if someone fills out an event permit to do an event
 12 in town they have to provide a document with a
 13 certain amount of insurance and then naming the City
 14 harmless, and I think that's a reasonable thing to
 15 expect.
 16 MEMBER CHASE: I do that when I do craft
 17 shows I have to have insurance so I carry it. It's
 18 just a matter of how much.
 19 MEMBER ROTHERMEL: What are you doing for
 20 craft shows?
 21 MEMBER CHASE: Craft shows is a million

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1 dollars insurance. It costs me 10 bucks a month
 2 because of -- I mean, the worst that could happen --
 3 MEMBER ROTHERMEL: I'd like to have his
 4 insurance.
 5 MEMBER GERACHIS: Yeah, really.
 6 MEMBER ROTHERMEL: Can I get your
 7 insurance agent's name?
 8 MEMBER CHASE: I'll hook you up. Yeah, I
 9 think it's reasonable.
 10 MEMBER ROTHERMEL: It's got to be. I
 11 mean.
 12 MEMBER CHASE: Trick hazards, jugglers
 13 might hit you with bowling pins. I know Mallory
 14 Square and a few others, Key West, they require
 15 insurance. There should be no reason we shouldn't.
 16 That would solve the issue with City liability, or
 17 even if -- umbrella.
 18 CHAIRPERSON: Okay. Anything else?
 19 MEMBER ROTHERMEL: I might think of
 20 something later but.
 21 CHAIRPERSON: Okay. Frank?

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1 MEMBER KNIGHT: The first thing I would
2 like to address is the registration thing. Along
3 with these guys I think a week is too long for a
4 performer to sit in front of one single property.
5 But with the registration I think there should be a
6 permit issued and there should be a fee for that
7 permit, and the permit could last for one year.
8 It's sort of like our zoning permits go from like
9 May first to April 30th of the next year. And the
10 fee has to be involved, I think, because they're
11 going to have to pay some part-time City employee to
12 register these people. They have to determine what
13 expressive activity is. They've got to keep track
14 of the space that's utilized through this draft.
15 They've got to be responsible for shifting them
16 around to make sure they're not in the same place
17 two weeks in a row or two cycles in a row.
18 And hopefully, like Bob brought up and
19 Mark said, there will be an insurance thing to be
20 addressed where they have to like see if they have
21 an insurance policy in place before they're allowed

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1 on the Boardwalk. And they have to have that hold
2 the City harmless clause in there. And like Bob
3 said, people sue for everything. There's so many
4 tripping and slipping things that go on on the
5 Boardwalk we don't hear about that we have to
6 settle, the City has to settle on, that I think they
7 should have insurance out there.
8 As far as the designated spots go, I was
9 under the impression that most of the spots would be
10 on the east side of the Boardwalk because most of
11 the merchants were complaining because on the west
12 side that's where it blocks access and egress to
13 their stores and that's where people were like
14 hanging over restaurants on the Boardwalk and
15 blocking people's views. So I was hoping most of
16 the things would be on the east side of the
17 Boardwalk.
18 Again, the size issue, 10 by 10 seems
19 large. We sort of addressed that so I'm glad we'll
20 have an amendment to cut that one down. We also
21 discussed the minimum distance between performers so

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1 that there really aren't dueling banjos out there.
2 And I understand the City is going to
3 determine the number of locations and the performer
4 areas are going to be marked off.
5 As far as signs go, the ordinance
6 addressed putting signs up to say the City doesn't
7 condone these people. But I'm just of the feeling
8 there's enough signs on the Boardwalk already. It's
9 getting cluttered out there and this year they're
10 going to be adding the smoke-free signs to the
11 Boardwalk. I don't know how frequently they'll be
12 placed but they will be out there. I think we can
13 place notices, for instance, on the LED signs, the
14 town's LED notification signs, the signs up and down
15 the Boardwalk. I think you can be on the resort
16 channel on the TV stations. And you can be on the
17 government and the tourism OC Ocean website.
18 And using the Caroline Street
19 amphitheater, I'm against that. I don't know how
20 you promote an act without appearing to endorse it.
21 I don't know how you direct people to the Caroline

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1 Street stage without promoting the act. And plus
2 this takes up the beach area. I don't know how long
3 the audience is going to be attracted out on the
4 sand to watch the show.
5 Finally, since there aren't going to be
6 any generators just recently in Key West the
7 performers there did use batteries for
8 amplification. We just discussed not having
9 amplification but I know like you have lights, so I
10 don't know if batteries are conducive to that but I
11 would think that might be an option for people that
12 need to put lights up or something.
13 Those are the things I've got written down
14 to this point.
15 CHAIRPERSON: Okay. So what I picked up
16 is to tag on with the insurance liability you want a
17 hold harmless.
18 MEMBER KNIGHT: Yeah.
19 CHAIRPERSON: With registration you want a
20 permit.
21 MEMBER KNIGHT: I'd like a permit. I'd

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1 like a fee for the permit because we're going to
2 have to pay for a part-time employee to administer
3 this whole thing. We just can't throw it all on the
4 City. Ann Marie at the front desk will have these
5 people line up on Monday morning.
6 CHAIRPERSON: No sign?
7 MEMBER KNIGHT: I'm for trying to get the
8 word out other than posting signs on light posts or
9 something along the Boardwalk. I just don't think
10 we need more signs out there.
11 CHAIRPERSON: And you're against Caroline
12 Street?
13 MEMBER KNIGHT: Yes. I'm against the
14 amphitheater being used for the street performers.
15 CHAIRPERSON: Did I capture the essence?
16 MEMBER KNIGHT: That's about it, yeah.
17 CHAIRPERSON: Okay
18 MEMBER ROTHERMEL: Maybe having the
19 insurance requirement precludes the need to have
20 signs because we were using a sign in this draft to
21 say, you know, we're not, we don't, we disavow

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1 anything in here. But if we're giving them, they're
2 required to give us the insurance you kind of
3 covered yourself.
4 MEMBER CHASE: I think the signs were
5 mainly to let the public know rather than the City
6 that it's kind of separated.
7 MEMBER ROTHERMEL: Yeah. But the point --
8 MEMBER CHASE: But I agree with the signs,
9 they're useless.
10 MEMBER ROTHERMEL: No one reads signs.
11 MEMBER KNIGHT: This whole LED did thing I
12 think some folks look at when they walk past. You
13 know, there's like four of them out there.
14 MEMBER CHASE: I mean people read the LEDs
15 far more than they read those other signs.
16 MEMBER ROTHERMEL: It gets lost in the
17 visual clutter.
18 MEMBER KNIGHT: That's why just use the
19 LEDs. They already exist.
20 CHAIRPERSON: All right. Mark?
21 MEMBER CHASE: Pretty much I'm just going

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1 to go, there's a lot of minute things that I'm going
2 to recommend. Under the, I guess, the definitions
3 of performers it's going, there's a little section,
4 it's page 55 of the draft, it's about midway down
5 through the top. It says indicia of a work of art,
6 physical or mental feat, or I'm sorry, performance
7 or performer are seeking and/or accepting voluntary
8 contributions through any means. We need to add the
9 phrase nonaggressive.
10 This, just by leaving it through any
11 means, allows for aggressive solicitation, allows
12 for people blocking paths, allows for accosting
13 them, basically forcing them to give money. We have
14 to add that terminology of nonaggressive in there.
15 It's just a minute little thing but it's going to
16 help the lawyers if they have to defend it.
17 MEMBER ROTHERMEL: Where are we?
18 CHAIRPERSON: Page 55.
19 MEMBER CHASE: About the main big center
20 paragraph about halfway through.
21 CHAIRPERSON: Nine lines down starting

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1 with indicia.
2 MEMBER ROTHERMEL: Just adding the word
3 nonaggressive?
4 MEMBER CHASE: Adding the word
5 nonaggressive. Otherwise it leaves it open to
6 aggressive solicitation.
7 The other one was page 57 where it's the,
8 basically the spaces as we were just talking. I
9 don't think -- we often think about we want to keep
10 the aesthetics of the Boardwalk out there. Going up
11 and down the Boardwalk, the painting little squares
12 all over the place is going to be counterintuitive
13 to keeping that place pretty.
14 In the off season, like right now, if you
15 go out there do we really want to see boxes up and
16 down the Boardwalk? There's got to be a much better
17 way to, you know, signify a space than boxes all
18 over the place because boxes are ugly. I mean, they
19 might work practicality but seven months out of the
20 year performers aren't here.
21 MEMBER ROTHERMEL: And no one there to see

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1 it.

2 MEMBER CHASE: Yeah. But locals will have

3 to stare at the boxes all year around. I'm just

4 thinking of you guys, I mean. There's got to be a

5 better way to signify it. That's why I was saying

6 percentage-wise it limits the number of people and

7 it gives the police a good estimate --

8 MEMBER ROTHERMEL: But there's subjective,

9 you know, this is 40 percent, that's 20 percent,

10 that's 30 percent. I'm not trying to argue with

11 you.

12 MEMBER CHASE: I know. But if we limit it

13 down to just two performers Lieutenant Pacini is

14 going to be able to much better gauge when he's out

15 there saying you're too big, you know, things like

16 that. He's going to be able to go more on a

17 one-on-one person because he gets to know the

18 performers out there versus just having these ugly

19 boxes and numbers all up and down.

20 I've seen pictures of Venice Beach where

21 it's two and a half miles of a Boardwalk it's just

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1 box after box after box. And when no one's there it

2 looks likes an empty flee market.

3 MEMBER ROTHERMEL: You know, one of those

4 lawsuits the concern was that the Chief of Police in

5 whatever town that was had too much latitude to

6 decide what could go and what can't go, and I think

7 --

8 MEMBER CHASE: We're not basing it on

9 content. We're just basing it on the size.

10 MEMBER ROTHERMEL: Yeah. But that's going

11 to be the argument then. It may not be content but,

12 you know, what about space?

13 MEMBER CHASE: Two performers, that's your

14 maximum size space is 40 percent and that would vary

15 up and down the Boardwalk and you keep all

16 performers on the east side away from the stores

17 like I suggested earlier. By doing that, I mean,

18 the registration sounds great, it sounds -- but it's

19 going to be a lot for City Hall. You're not going

20 to need a part-time. You're going to need a

21 full-time employee to take care of that.

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1 MEMBER KNIGHT: For the summer. That's

2 what I meant by part-time. Not year around but a

3 seasonal employee.

4 MEMBER CHASE: Okay. And then while we're

5 issuing registration and things like that City Hall

6 is closed on weekends. What do we do about the

7 vacationers that come out and use your hotel that

8 want to go out and actually play? Are they

9 forbidden? We have to take that into accommodation.

10 What do we do about them?

11 CHAIRPERSON: As it exists now Ninth

12 Street north is available to them anytime.

13 MEMBER CHASE: As long as we leave an

14 alternative.

15 CHAIRPERSON: There is an alternative for

16 them, I mean, with City Hall being closed that they

17 can go to Ninth Street. And my guess is that yeah,

18 they want to be downtown but, I mean --

19 MEMBER CHASE: Without a permit they can

20 go up north.

21 CHAIRPERSON: They can go up north. And,

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1 I mean, they aren't doing it for a living. They're

2 here, it's a hobbyist and in all likelihood they may

3 get something in their belt. So they do have an

4 option if City Hall's not open.

5 MEMBER ROTHERMEL: So they sit on their

6 balcony and strum. I mean.

7 MEMBER KNIGHT: And I'll be looking

8 forward to renting the room next to them.

9 CHAIRPERSON: If they're sitting on their

10 balcony, I mean, they're under the hotel's guise.

11 MEMBER CHASE: Especially with, I mean,

12 this is my main concern, especially with what I

13 do -- you all know what I do -- if you start making

14 a five by five space that really goes away with all

15 of my safety precautions that I do. So it's a

16 matter of these larger acts such as mine that I'd

17 rather have safety prevention than having something

18 that negates all of that and then that puts the

19 public at risk when I've already had safeguards in

20 place that kept them safe. So it's a matter of

21 that.

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1 But a lot of the streets from I know not
2 far from Fourth down to I think it's Dorchester
3 where Jolly Rogers is -- on the west side?
4 MEMBER ROTHERMEL: Wicomico.
5 MEMBER CHASE: Wicomico. That is the main
6 area that a lot of the performers field. You have a
7 juggler that sits down on South Division. He would
8 have to stay there. You try putting him anywhere
9 north and it's going to cause havoc. It's going to
10 be -- he's going to be in the tram lane. He's got
11 to have a large area just because of what he does.
12 If he loses control of one of his juggling pins or
13 whatever he's juggling. You also have the unicycle
14 who sits on that tall unicycle thing, if he falls
15 it's best to have him down south. So I would say
16 eliminate South Division from the weekly requirement
17 just because you need that constant area. He has
18 nowhere else to go. So are we saying he can only
19 work one week or X number of days at a time?
20 MEMBER ROTHERMEL: Yeah, I thought I read
21 that we can make reasonable decisions on where

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1 people can do things because of the overriding
2 benefit to the community.
3 MEMBER CHASE: As written as it is right
4 now is --
5 MEMBER ROTHERMEL: If he can't perform in
6 the space he can't perform.
7 MEMBER CHASE: Yeah. But as written right
8 now it's you're required, you can only work here
9 one week and then you're not allowed to work there
10 one week. A lot of performers that's going to
11 accommodate. I think just excluding South Division,
12 leave that as just like north up Ninth leave it as a
13 first come first served. You're down there in the
14 easements, virtually no other performers go down
15 there other than the juggling act and the unicycle.
16 They're the only two main guys. 90 percent of the
17 time you don't see musicians down there. You don't
18 see any of the other main acts below Dorchester.
19 So I'm just saying South Division down
20 just treat it like Ninth and up and first come first
21 served as open.

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1 CHAIRPERSON: Okay.
2 MEMBER KNIGHT: So both South Division and
3 South First?
4 MEMBER CHASE: Yeah. I mean, I don't know
5 of any performers that actually use South First.
6 MEMBER ROTHERMEL: South First is also an
7 access on to the Boardwalk.
8 MEMBER CHASE: Yeah. But I don't know of
9 anyone who has ever gone down that far.
10 MEMBER ROTHERMEL: No money down there.
11 MEMBER CHASE: Believe it or not, it's two
12 different types of crowds. When you get down past
13 Thrashers Fries in front of Jolly Rogers, you have
14 what's called an amusement crowd. Those people are
15 there specifically for the rides. The amusement
16 park's done sucked all their money out of their
17 pocket so they have no money for --
18 MEMBER ROTHERMEL: I bet you they would
19 argue that point.
20 MEMBER CHASE: Well, I mean, I take my
21 girls down there when I'm on there, you know. A

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1 family of five for three hours, that's 3, \$400. So
2 that leaves little to no cash for --
3 MEMBER ROTHERMEL: Do you see the cost of
4 artwork on the Boardwalk? My God!
5 MEMBER CHASE: Then page 59 was the
6 utilization of spaces. The ropes. I don't think we
7 should ban the ropes. Page 59, it says in addition
8 a person utilizing a space shall not be permitted to
9 rope off or --
10 MEMBER ROTHERMEL: I'm sorry. I gotcha.
11 MEMBER CHASE: Basically the ropes
12 actually other than for me, my main thing is safety
13 just so that the 3-year olds, the 4-year olds when
14 mother and father are not paying attention come
15 wandering in. We've all had little children or
16 known little children, if you're not watching them
17 100 percent they can come wandering in. I want to
18 prevent that for safety concerns alone. But other
19 than just for my concern or my thing ropes are
20 actually utilized by most of the performers that lay
21 them on the ground. It's almost as a here's your

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1 line, please come off the Boardwalk and come to the
2 line. It gives a visual cue to the performers.
3 If you look through all the material we
4 have you'll see performers with and without ropes.
5 All the pictures with ropes the crowd is right up on
6 them. The performers without ropes they're blocking
7 90 percent of the Boardwalk.
8 It's not really a safety issue for like
9 the magicians but it is, it's a way of controlling
10 his crowd which is one of the main things that we
11 wanted was controlling the crowd. And by
12 eliminating the ropes it ties their hands. They
13 can't control their crowd effectively. That's going
14 to cause a lot of issues and a lot of concerns for
15 you guys as business owners because now a performer
16 can't control his crowd. I think just taking that
17 out --
18 MEMBER ROTHERMEL: I thought our role --
19 and I'm not trying to debate you -- I thought our
20 role was to create an opportunity so that freedom of
21 expression would be allowed and we're not creating

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1 a, we shouldn't be delineating space for a business.
2 And that's one of the things that's always irritated
3 me, the guys that go on to the Boardwalk and they
4 stake out their territory and they're defining space
5 in a public arena, and that bugs me that they're
6 claiming that space because the rest of the public
7 can't have that space. And that's why it's a public
8 thoroughfare.
9 So I'm back to the idea of defining the
10 space. The City says this is where you can do it
11 and if you can't do it in here, you can't do it.
12 And ropes and defining that space that's like
13 staking out your own, you know, claim to the --
14 MEMBER GERACHIS: If you have to have a
15 hundred square feet to express yourself, then maybe
16 you need to rent a space. You know, I just think at
17 that point it's more than just expressing yourself.
18 MEMBER CHASE: The rope isn't about
19 marking off territory.
20 MEMBER GERACHIS: I understand your
21 argument there. I understand what you're saying.

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1 But it's still delineating, it's giving you the
2 right to delineate public space as yours, in
3 essence.
4 MEMBER CHASE: If we can look at it this
5 way, though: The rope of the magician is laying on
6 the ground. It's mobile. He takes it up at the end
7 of the day and he leaves. Therefore, it's not a
8 painted box on the ground that's going to last there
9 all year long but it does the same exact thing as a
10 full yellow box around your permitted zone but it's
11 not lasting year around. If you eliminate ropes the
12 magicians who lay their rope down to be able to draw
13 the people up, that's delineating his space. You
14 can paint boxes on the ground. That's delineating
15 the space. But I think it's going to be a much
16 better idea to have the nonpermanent solution of
17 having the magician lay down his rope, delineate his
18 space than have a permanent box you guys got to
19 stare at year around.
20 MEMBER ROTHERMEL: The permanent box
21 doesn't bug me.

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1 MEMBER KNIGHT: The box doesn't bother me.
2 MEMBER GERACHIS: We'll forget about it in
3 the first week. I don't even see the signs on the
4 Boardwalk anymore.
5 MEMBER CHASE: But when you take pictures
6 of Ocean City and you look at them --
7 MEMBER ROTHERMEL: I usually take the
8 horizon, not the --
9 MEMBER CHASE: But if you're looking
10 straight down the Boardwalk and you're taking
11 pictures is what we want broadcasted out to the
12 country and people that are actually searching Ocean
13 City pictures of these yellow boxes or blue boxes or
14 whatever color they decide? These boxes up and down
15 the Boardwalk, is that an image that we want of
16 Ocean City?
17 CHAIRPERSON: How many guys use rope?
18 MEMBER CHASE: Just mainly the magicians
19 and then it's me and another spray paint artist that
20 works on Third. We use our ropes as mainly a safety
21 safeguard. But magicians use it as, magicians and

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1 acts like that, we're the only ones that use rope.
2 You have character artists, they don't use rope.
3 The hennas, they don't use rope. Magicians don't
4 use rope. It's just mainly the people that draw the
5 large crowd use it as the crowd control. Then with
6 you guys, I think 11 o'clock turn the music. I
7 think that's reasonable. In the paperwork it says
8 10:00 but I think 11:00 would be much more
9 accommodating. Weekdays, weekends.
10 CHAIRPERSON: You said 11:00 weekdays and
11 weekends?
12 MEMBER CHASE: Yes.
13 CHAIRPERSON: Okay.
14 MEMBER CHASE: That goes along with the
15 ordinances for liquor licenses, things like that.
16 11 o'clock just because there are kids that go to
17 bed, it's feasible and I'm with you guys on that.
18 11 o'clock. No amplification.
19 MEMBER ROTHERMEL: And it's consistent
20 with a known time line that we see. Would I like to
21 have it earlier? Sure. But that doesn't seem fair

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1 to me because there's other --
2 MEMBER CHASE: I mean, the stores shut off
3 their music around 11 o'clock. There should be no
4 reason we shouldn't. It's fair. It's equal.
5 Generators, I know we want to ban them. But the
6 Fire Marshal himself says if they're used in
7 accordance to the manufacturer recommendations,
8 they're completely safe. His actual recommendation
9 was to regulate the fueling off the Boardwalk. He
10 didn't say to ban them. He said he would leave it
11 up to us but his actual recommendation was not to
12 ban them. It was the fueling aspect. Because
13 otherwise they're 100 percent safe. And he
14 acknowledged that.
15 So basically we're attempting to ban
16 something that's safe just because of the aspect of
17 fueling it. Rather than regulating the fueling you
18 want to ban the entire thing which I think is
19 counterintuitive. It's like saying, you know, water
20 bottles can be unsafe if thrown, so rather than
21 banning water bottles just ban throwing water

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1 bottles. It's the same type of linear --
2 MEMBER ROTHERMEL: The space heater that
3 was in the brew pub down here was safe if used as
4 directed and it started a fire that displaced 14
5 homes. It is in the use, and I took exception to
6 the word unsafe as well because they're not unsafe
7 if they're used correctly. The problem is are they
8 going to be used correctly and there's no way of
9 monitoring that because you're in such a wide open
10 space. And I think getting rid of the issue, you
11 know, is the best way to do it.
12 MEMBER CHASE: If we're going to require
13 insurance and things like that and have a
14 registration system why not just add generators to
15 it? Have City Hall able to regulate it. You would
16 have to, you know, when you register you would have
17 to actually give the service log, give things that
18 the Fire Marshal can reference.
19 Because you're already, you're going to
20 have to have proof of insurance, you're going to
21 have to have all this other paperwork that you're

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1 going to have to give them, what's one more sheet?
2 MEMBER ROTHERMEL: Well, again --
3 MEMBER CHASE: Or even a waiver or a sign.
4 MEMBER ROTHERMEL: I think our role is to
5 provide an avenue for the expression of expressive
6 materials, not an accommodation for them to be
7 commercialized. So that's, I see getting rid of the
8 generator creates it just to an opportunity where
9 someone is going to do their art, make their art
10 whether it's music or paints or whatever, you know.
11 If you need power to run your operation rent a
12 space. You know?
13 MEMBER GERACHIS: I agree. I like the no
14 generators.
15 MEMBER CHASE: If you say if you need
16 power because visual art like me at night it's being
17 able to see my colors are very important. If we
18 want to ban generators can we add the option of the
19 performer able to actually pay --
20 MEMBER GERACHIS: When did we cross the
21 line of marketing versus expressing? See, this goes

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1 back to the original argument. I know, I don't want
2 to sit here and debate it, but we're -- it seems
3 like to accommodate the performers in every aspect
4 of their marketing, we're never going to get
5 anything done.
6 MEMBER CHASE: No. What I'm recommending
7 is if you want to ban the fueling of generators
8 either allow solar powered generators, something
9 that's not hot, that's not combustible.
10 MEMBER GERACHIS: Like he said, batteries.
11 MEMBER CHASE: Or batteries. Something
12 that's, you know, renewable like that if you wish
13 that's going to solve your concerns about the
14 fueling, the heating up, the exhaust. Or you can
15 offer it so that performers can pay a nominal fee or
16 even a one-time yearly fee to the City to use public
17 electric which would solve all battery needs, which
18 would solve all that other need out there.
19 MEMBER ROTHERMEL: I think if you had
20 battery powered lights it would solve a lot of
21 issues.

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1 CHAIRPERSON: Could you use batteries?
2 MEMBER CHASE: Yeah. But then you have
3 batteries out there. Then you have, to power some
4 of the lights you have car batteries sitting out
5 there that if used improperly could leak or if not,
6 you know, taken care of they can get damaged.
7 There's a lot of small minute things that you have
8 to consider when you just blatantly or ban something
9 because the alternatives can be just as unsafe as
10 what you're banning.
11 CHAIRPERSON: Unintended consequences.
12 MEMBER CHASE: Yeah.
13 CHAIRPERSON: How many people use
14 generators?
15 MEMBER CHASE: That I can count up I think
16 one. But Lieutenant Pacini would actually know
17 more. He's ventured -- four people.
18 LIEUTENANT PACINI: Three or four.
19 MEMBER CHASE: If you don't mind, how many
20 of those four have you seen actually unsafe
21 conditions?

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1 LIEUTENANT PACINI: What do you mean by
2 unsafe?
3 MEMBER CHASE: That would actually cause a
4 potential like major safety hazard. I mean, how
5 many people have you --
6 LIEUTENANT PACINI: I haven't read the
7 report yet. As I've said to you guys previously,
8 we're exceptionally safe but occasionally we'll get
9 somebody that doesn't act correctly. And I think my
10 knowledge of the report is we're a little bit
11 concerned about having open cans of gas up on the
12 Boardwalk.
13 MEMBER CHASE: So it's really not about
14 the generator. It's about the fueling and the open
15 gas and just eliminating that rather than the
16 generator. Because the Fire Marshal says they're
17 perfectly safe. I mean, have you actually seen
18 anyone use a generator unsafely out there?
19 LIEUTENANT PACINI: No.
20 MEMBER CHASE: Other than the 50-foot one
21 on the beach out in the middle of nowhere --

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1 LIEUTENANT PACINI: That was actually
2 propane. When I read the report I'll know more.
3 But I understand the reasoning behind it.
4 MEMBER CHASE: I think just banning the
5 fueling and the refueling of the generator on the
6 Boardwalk would solve the safety concerns that are
7 actually happening.
8 CHAIRPERSON: Okay.
9 MEMBER CHASE: I think that's about it.
10 MEMBER GERACHIS: What about solar? No
11 combustible fuel generators.
12 MEMBER CHASE: As it's written right now
13 it bans all generators. Solar powered generators
14 are still generators.
15 CHAIRPERSON: All right. So to recap, you
16 have a phrase adjustment on page 55 to include
17 nonaggressive. You wish box delineation to be
18 addressed in another way other than painting it on
19 the Boardwalk. You're suggesting that the box size
20 be based on the percentage of the square footage or
21 the footage at the end of the street end. You also

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1 asked for South Division to be exempt from the
2 regulations of the boxes. You've asked to keep the
3 rope as a demarker. Your fine as with everybody
4 else at 11 o'clock. And continued generator use.
5 MEMBER CHASE: Yes. But ban fueling on
6 the Boardwalk.
7 CHAIRPERSON: Okay. I think it already
8 is, but.
9 MEMBER CHASE: Well, I think the Fire
10 Marshal's concern was it wasn't actually written.
11 CHAIRPERSON: Right. All right. Let me
12 try to, I think we can put most of our concerns in
13 one amendment and that is the size and placement. I
14 mean, we can't handcuff the City going forward with
15 three by three, five by three. It's got to be a
16 determination by the people, the professionals, the
17 engineering department, the public works department
18 to look at each street end, look at the Boardwalk
19 and make that recommendation.
20 So, I mean, I know Bob had concerns about
21 the space and all and everybody's had concerns about

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1 the space so I think that to eliminate a lot of
2 these concerns we can craft our own amendment to
3 this that places the onus upon the City. I mean,
4 the City is going to be responsible for creating
5 this ordinance anyway. They should be the ones that
6 go out and figure out the size and the location of
7 these boxes, not to handcuff them in the future.
8 MEMBER ROTHERMEL: But aren't they looking
9 for us to give them the recommendation of whatever
10 it is?
11 CHAIRPERSON: We can clearly say, I mean,
12 the minimum space and the maximum space but, I mean,
13 as Mark has said and I know and you guys, all the
14 street ends aren't the same. We've already
15 discussed that in the access points. And I think, I
16 mean, they need to be addressed when we discuss the
17 size of the boxes as well.
18 So, I mean, my amendment to this would be
19 that, I mean, we're in favor of a box. I don't
20 really care how it's demarked. Obviously, we can
21 paint it. I agree with the sightliness of that.

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1 I'm not a big fan of the rope. But there's
2 obviously other ways to mark it. They do it with
3 GIS mapping and all. It's like a spike in the
4 ground. So you have four spikes in the ground to
5 mark your box. You paint it pink and you know where
6 it is.
7 I think if we restrict these boxes so
8 small, that creates a problem because in reading
9 this, not being a lawyer but the Court has respected
10 history and historical sizes of boxes. So if you
11 take the boxes away from the guys that were using
12 more to somebody who is not, I mean, they will claim
13 that they are not being able to express themselves.
14 I just think that, I mean, in my reading
15 us saying all the boxes should be uniformly one size
16 no matter what creates problems. I think if we
17 allow the City to do what they do and survey the
18 sites and get the boxes out there I think that's
19 helpful for the future and helps this stand.
20 We've given the City enough specific that
21 I don't think by saying we want the boxes and we

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1 want spaces marked but if we tell them what the size
2 of the space is I think it goes back to that
3 unintended consequences where they say you set it
4 three by three you end up with five spaces a street
5 because they figure they fit and it doesn't matter.
6 So I think the amendment to the City would be that
7 they craft the boxes and the box size and the
8 location of the boxes.
9 We have several of them and we'll just --
10 before I do that, do you want to try to come up with
11 an amendment that addresses that box size and
12 placing the responsibility upon the City or do you
13 guys want to come up with that requirement?
14 MEMBER ROTHERMEL: What if we just, I'm
15 not getting this, this is my idea earlier,
16 one person per street end, one opportunity,
17 one person, one performer, one artist, whatever, per
18 street end and maybe you don't need to make a box.
19 CHAIRPERSON: Mark?
20 MEMBER CHASE: If you do that, then
21 registration would kind of be, you know, you could

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1 eliminate it because then when you go out there if
2 one performer is already there no one else is going
3 to happen.
4 The unseen consequences now you're going
5 to take most of the musicians who work in the stores
6 for you guys and when they come out at night they're
7 not playing in front of all the hotels up north
8 because of all the other performers who actually do
9 it full-time. So the unseen consequences you would
10 see is now you have all that music instead of being
11 down there where it's louder in downtown, it's going
12 to be right up with the hotels and that's going to
13 be one of the unseen things that we're not going to
14 look at by just permitting one per street.
15 MEMBER KNIGHT: How many street ends are
16 available? 12? I mean between South First and
17 Ninth Street. You're eliminating Dorchester and
18 North Division.
19 MEMBER ROTHERMEL: You got Caroline, you
20 got Talbot, you got Somerset, you got Worcester --
21 MEMBER KNIGHT: 14th.

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1 MEMBER ROTHERMEL: No, not -- Worcester.
2 Wicomico. Yeah. Then you're downtown.
3 MEMBER KNIGHT: So you're fifteen streets.
4 MEMBER ROTHERMEL: Fifteen streets.
5 CHAIRPERSON: Minus what you don't use.
6 MEMBER KNIGHT: So it would only be 15
7 performers.
8 CHAIRPERSON: But less than that because
9 you don't have -- oh, you didn't mention Dorchester
10 and --
11 MEMBER ROTHERMEL: I didn't.
12 MEMBER KNIGHT: Wouldn't that be taking
13 away their right to limit them to 15 performers?
14 MEMBER ROTHERMEL: I think some of the
15 rulings that we saw said that there is credence to a
16 community limiting the number of spaces that might
17 be available. It doesn't have to be a free for all
18 because of all of the public safety.
19 MEMBER KNIGHT: I think it's even limited.
20 Is that too limited?
21 MEMBER ROTHERMEL: I don't know. I don't

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1 know. Honestly, I like the idea of having a permit
2 because you got, you almost have to know who's there
3 especially the ones in the costume characters.
4 MEMBER CHASE: We don't require anyone
5 who's actually walking the Boardwalk to know who's
6 there. There's far more people walking that
7 Boardwalk --
8 MEMBER ROTHERMEL: Again, we are allowing
9 this thing to happen and then I think you need to
10 have some kind -- because if something does happen
11 the City's the one that's going to take the hit on
12 the thing. So in order to have insurance they got
13 to tell someone they got insurance. You know? I
14 mean --
15 MEMBER CHASE: Sure.
16 MEMBER ROTHERMEL: If we don't have a
17 permitting process who knows if they have insurance?
18 So, you know, they need to register that they're
19 going to be a performer on the Boardwalk and that
20 they have insurance and I think that's a reasonable
21 expectation.

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1 CHAIRPERSON: What if we say one box per
2 street end, with insurance, and direct the City to
3 determine the size of the box?
4 MEMBER ROTHERMEL: Yeah.
5 MEMBER GERACHIS: I'll go along with that.
6 MEMBER CHASE: I think that's going to
7 eliminate a lot of, as the courts have often said,
8 you need ample alternatives, and even up north.
9 MEMBER ROTHERMEL: We have -- if you can't
10 do it there you can create an area at Sunset Park.
11 CHAIRPERSON: Once again I remind you this
12 is our recommendation to the City Council. They
13 may --
14 MEMBER GERACHIS: And it's still a free
15 for all --
16 MEMBER CHASE: I would recommend two. I
17 mean, you can have two acts that totally cohabitate
18 and that's going to limit the number of acts. You
19 won't have the five, six, seven. I think two would
20 be more accommodating because a lot of street ends
21 have a fire hydrant right in the middle of the west

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1 side or the east side. So it's kind of like that
2 right there delineates one act from the other just
3 by the simple fire hydrant's there right in the
4 middle. So I think two acts, one north of the fire
5 hydrant, one south of the fire hydrant. Would that
6 work for --
7 CHAIRPERSON: That clearly gives them more
8 opportunity. Do you have any problem with going to
9 two? As he said, there may be streets that won't
10 accommodate two by the placement of a fire hydrant.
11 MEMBER KNIGHT: I would agree with a
12 maximum of two per street.
13 CHAIRPERSON: Okay. So the amendment to
14 consolidate this would be two boxes per street, with
15 insurance, and you have the hold harmless clause to
16 the City.
17 MEMBER KNIGHT: Are you just doing one
18 amendment for the whole --
19 CHAIRPERSON: I'm trying to consolidate
20 the boxes and the insurance and then we'll jump into
21 these other ones one by one.

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1 MEMBER KNIGHT: Okay. So just the
2 insurance has to have a permitting process or some
3 sort of coming to City Hall and showing your
4 certificate of insurance to somebody so they know
5 you've got it. That's going to be with the
6 registration process or something.
7 CHAIRPERSON: With the registration
8 process.
9 MEMBER CHASE: Now, when we're doing the
10 street ends are we making a recommendation that from
11 Fourth Street down everything's on the east side,
12 right?
13 CHAIRPERSON: Based on, I mean --
14 MEMBER CHASE: The east side boardwalk,
15 the performers, the boxes, things like that.
16 CHAIRPERSON: Right. And that would be
17 based upon the City's survey of that area.
18 MEMBER CHASE: What about Fourth Street
19 up? If you put them on the east side the tram is
20 right in the middle of that Boardwalk. Are we going
21 to put performers there to draw crowds in the middle

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1 of the tram lane or are we going to stick them on
2 the west side where they could bring them a little
3 bit farther away from the tram and hopefully prevent
4 accidents from the tram? Because we've all seen the
5 tram. They don't slow down. They just honk and
6 keep going.
7 CHAIRPERSON: You're going to lose a
8 couple on the way up. You're going to lose street
9 ends going up --
10 MEMBER GERACHIS: Once again, I have no
11 problem with that.
12 CHAIRPERSON: -- with Fifth Street and
13 Surf Avenue so you cut down that end. To be honest
14 with you, the guys that perform in those street ends
15 don't draw crowds. That's been my experience.
16 MEMBER CHASE: I don't get above Third so
17 I don't know the performers up there.
18 CHAIRPERSON: My experience is --
19 MEMBER ROTHERMEL: Maybe they don't go up
20 there because there's no money up there.
21 MEMBER CHASE: No. Actually --

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1 CHAIRPERSON: There's no money. There's a
2 balloon guy --
3 MEMBER CHASE: I'd go up until Ninth but
4 there's no spot for me.
5 CHAIRPERSON: -- that I see occasionally
6 and a guy that plays the guitar and they're not --
7 MEMBER GERACHIS: A guitar guy?
8 CHAIRPERSON: Yeah. I mean, I think
9 that's what you see, and obviously --
10 MEMBER GERACHIS: And -- man.
11 CHAIRPERSON: Yeah. And costume
12 characters. North of Fourth Street they aren't
13 going to draw crowds because they're out of the
14 traffic pattern.
15 MEMBER CHASE: Right.
16 CHAIRPERSON: So our recommendation is two
17 boxes per street with a City survey recommending the
18 size of the box and the location of the box, a
19 registration process that requires an insurance
20 component and a hold harmless clause. Are we all in
21 agreement with that to eliminate the individual, not

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1 all the individual amendments, we'll go back to
2 them, but as a general? Are we all good with that?
3 MEMBER CHASE: Okay.
4 MEMBER KNIGHT: There's still going to be
5 a registration process?
6 CHAIRPERSON: There is a registration
7 process.
8 MEMBER KNIGHT: Is there a fee? Are we
9 talking permits at this point?
10 MEMBER CHASE: I think the City will
11 determine the fee.
12 MEMBER KNIGHT: Just a recommendation.
13 I'm not trying to determine a fee. I'm just
14 recommending a fee be charged.
15 MEMBER CHASE: Yes. A nominal fee for
16 their paperwork and all the things they have to do.
17 MEMBER ROTHERMEL: It used to be like \$8
18 to get a permit to be on the Boardwalk.
19 CHAIRPERSON: Do you want to include that
20 with --
21 MEMBER KNIGHT: Wherever you want to put

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1 it. It creates off the registration and I think
2 that's got to be part of registration.
3 CHAIRPERSON: Sort of a processing fee.
4 MEMBER CHASE: If we're talking about a
5 registration, are we keeping it to one week? Are we
6 modifying that?
7 CHAIRPERSON: We haven't got -- we'll come
8 to that. So with the processing fee to be
9 determined by the City based on their costs.
10 MEMBER GERACHIS: Right.
11 CHAIRPERSON: Okay. Does that amendment
12 take care of a lot of the spacing and all? You good
13 with that?
14 MEMBER KNIGHT: I wanted to say at each
15 street end a two box max, maximum. I mean, he said
16 it could be determined that there wasn't enough room
17 for two boxes.
18 CHAIRPERSON: Are you fine with a two box
19 max? Everybody good with that?
20 MEMBER ROTHERMEL: We're not defining the
21 size of a box.

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1 CHAIRPERSON: We're not defining. The
2 City will define. A 2 box and a 10 by 10 max.
3 MEMBER CHASE: 90 percent of street ends
4 can't even accommodate 10 by 10.
5 CHAIRPERSON: Right. But that gives the
6 City guidance to do what they do and they also
7 realize that there's a, that's the biggest box that
8 we're willing to recommend at this point.
9 Obviously, there will be smaller boxes but there
10 will be nothing, no more than two, no more than two
11 10 by 10 boxes.
12 MEMBER CHASE: I'll say if you delineate
13 the width and just make it a, you know, the width
14 from like on First, Second Street it's approximately
15 from the tram lane to the Boardwalk you have 8 feet.
16 So anything above 8 feet rather than having people
17 go the width have it accommodate more I would say in
18 length especially for visual artists, not just
19 myself but visual artists themselves where they need
20 a place to actually lay down some of their stuff
21 that would -- because personally I don't want to see

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1 4-foot high walls from performers down the Boardwalk
2 hanging as if they're shops. Because what's going
3 to happen is if you delineate and a performer knows
4 that he's going to be there you're going to start
5 seeing a lot more of what looks like a store front.
6 MEMBER ROTHERMEL: I think 10 by 10 space
7 is just too big. It's a hundred square feet of
8 space. And again, you know, we shouldn't be worried
9 about how someone conducts their business, you know,
10 and I hear what you're saying if you can't lay it on
11 the Boardwalk, which I don't think is right anyhow,
12 they're going to start putting A frames up. And if
13 you're putting A frames up how come a store on the
14 side street can't put an A frame up and direct them
15 around the corner?
16 MEMBER GERACHIS: I can't put it up in
17 front of my store after May 1st.
18 MEMBER CHASE: In the draft it says you
19 can't have a display higher than four feet. But I
20 can foresee visual artists having, because it
21 happens out at Venice Beach, they know they're there

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1 every day because they registered for that spot,
2 they got that spot and now it's their spot. So it
3 allows them to bring what they want. As long as
4 they stay within the guidelines you're going to see
5 a lot of manipulation of that. That's going to be
6 one of the unseen side effects of having that
7 registration rather than the first come first served
8 get out there. Because if you went out there now
9 you didn't see more semi-permit things, you didn't
10 see a lot of store front looking things. But if you
11 allow that you're going to see, or even require
12 registrations, as much as it sounds like a good idea
13 it might be one of those unforeseen consequences
14 that we just might not see in the future.
15 It's something we got to think about.
16 Because as it stands right now without the
17 registration performers, they go out there, they're
18 pretty much limited by what they can carry. That's
19 about it. It's a one trip out there to get your
20 spot. And then if you leave to get more stuff,
21 you're gone a half hour, you're stuff's gone. Give

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1 that power to the police. I'm very good at
2 foreseeing like future consequences of things.
3 MEMBER ROTHERMEL: Why don't we just
4 eliminate all of them?
5 MEMBER GERCHIS: There's always
6 manipulation.
7 MEMBER ROTHERMEL: Why don't we just
8 eliminate all of them?
9 MEMBER CHASE: Humanity, that's one of our
10 greatest qualities, we tend to be able to walk that
11 fine line to what's legal and what's not legal. I
12 mean, the police see it every day. People walking
13 that fine line of what's permissible. And
14 everything in life is frontal views.
15 MEMBER KNIGHT: I was just going to try
16 and formulate, even if you walk out there and just
17 get a spot you can still have a friend or whatever
18 back a van up to that street and unload stuff for
19 you and bring it over. I don't think you're limited
20 to what you can carry up there in one trip. I think
21 it can be abused either way.

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1 MEMBER GERACHIS: Last summer did you
2 carry your stuff up in one trip?
3 MEMBER CHASE: Yes.
4 MEMBER GERACHIS: Every day?
5 MEMBER CHASE: Every day. And I broke it
6 down in one trip every day. It fit on -- I had my
7 helper -- actually, I built my dollies --
8 MEMBER GERACHIS: You have two dollies?
9 MEMBER CHASE: Yeah. And everything fit
10 right on there. And it was very compact and
11 portable. My fear is if people know where they're
12 going to be at you're going to see vans backing up
13 to that Boardwalk. And I don't think that's
14 something that none of us up here actually want.
15 MEMBER ROTHERMEL: Where are we?
16 CHAIRPERSON: We still have --
17 MEMBER CHASE: I'm sorry, I threw a --
18 CHAIRPERSON: That's all right.
19 MEMBER KNIGHT: Right now the registration
20 is just addressing insurance and a fee.
21 CHAIRPERSON: It was included already in

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1 the report their name, what they're going to do,
2 insurance. I mean, this is in addition to what's
3 in --
4 MEMBER KNIGHT: But it is addressing
5 assignment of spots?
6 CHAIRPERSON: Right. And additionally
7 with a processing fee to be determined based on
8 cost.
9 MEMBER KNIGHT: And insurance.
10 CHAIRPERSON: Right. So, I mean, we can
11 sit here and say what if and try to figure out --
12 MEMBER GERACHIS: It could be endless.
13 CHAIRPERSON: It is endless. We have
14 discussed all the what ifs, I think, what's next, et
15 cetera. So I mean, clearly the report --
16 MEMBER ROTHERMEL: I'd almost go back to
17 the one person per street, you know, just to make it
18 --
19 MEMBER KNIGHT: You're still assigned.
20 MEMBER ROTHERMEL: You're still assigned
21 but it's just one person, you know. There's 15

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1 opportunities and the City makes it available and
2 maybe that becomes more and more available to people
3 expressing their art. I mean, on a daily basis, you
4 know, maybe that --
5 MEMBER CHASE: This is what happens. Pass
6 a couple around.
7 MEMBER ROTHERMEL: Maybe you only have it
8 for a day.
9 MEMBER CHASE: This is Venice Beach. This
10 is what happens when you have required spots or
11 given daily spots.
12 MEMBER ROTHERMEL: Yeah. But you can't
13 repeat the same spot.
14 MEMBER CHASE: If you still know exactly
15 where you're going to be this is -- this is Venice
16 Beach.
17 MEMBER GERACHIS: It's starting to look
18 like that downtown.
19 MEMBER CHASE: This is what happens in
20 Venice Beach by them knowing where they're going to
21 be at every day. I don't want that for Ocean City

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1 personally.
2 MEMBER ROTHERMEL: I'm saying if they have
3 to come in, it's 15 spaces but it's 15 times 7 if
4 they're on a daily basis, you know, person A gets
5 one street on Sunday but he can't be there on Monday
6 so they have to register for different days and have
7 different things and they can't be in the same
8 place. That way your customers aren't getting
9 abused by the same people all the time.
10 MEMBER GERACHIS: Fifteen spaces south of
11 Ninth, then you've got Ninth on up.
12 MEMBER CHASE: Either way by coming in and
13 registering for that space you know you have that
14 space, and this is the unseen --
15 MEMBER ROTHERMEL: But you can't have
16 anything over 4 feet, so there's the ten by ten tent
17 you can't have.
18 MEMBER GERACHIS: I don't know if I buy
19 into that argument, because when you come up to the
20 Boardwalk if they're going to mark off the space
21 like you do, you already know your space. I mean,

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1 once you get there if they've got it in their van
2 they're going to pull it out anyway no matter where
3 it is.
4 MEMBER CHASE: I think unforeseen
5 consequences you'll have more people doing that.
6 Right now I'm limited by what I carry in one trip.
7 MEMBER KNIGHT: On two large dollies.
8 MEMBER CHASE: Well, they're not large.
9 MEMBER GERACHIS: But you know where
10 you're going. You know where you're going every
11 day.
12 MEMBER CHASE: But sometimes I get to a
13 spot and it's already taken, I move to a different
14 spot.
15 MEMBER GERACHIS: But really what's the
16 difference? You're taking the same amount of space
17 every day. Just because you know where it's going
18 to be, how is that necessarily going to be
19 different? Because it's the same amount of space.
20 MEMBER CHASE: I think it's going to end
21 up looking I would say more prone to abuse. You

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1 won't have people out there that take the pride like
2 I do in the way it looks.
3 MEMBER GERACHIS: Given that argument I
4 think we're going to lose that anyway. It's just
5 going to proliferate unless you cut down on the
6 number of spots. It's going to proliferate.
7 MEMBER CHASE: I think when we -- go back
8 to registration. If we do that, a week.
9 CHAIRPERSON: All right.
10 MEMBER GERACHIS: I don't think a week.
11 CHAIRPERSON: Okay. We'll have to go
12 through these one by one, then. We can't
13 consolidate. All right. First one, add more
14 restricted use for the access and at the streets
15 where the Boardwalk is even with the street. All in
16 favor?
17 MEMBER CHASE: That eliminates Third
18 Street. That's about it.
19 CHAIRPERSON: And Surf Avenue.
20 MEMBER GERACHIS: Fifth Street.
21 MEMBER CHASE: As I say, I don't get above

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1 Third. So I don't know what's above Third.
2 MEMBER GERACHIS: It doesn't affect you so
3 you don't care. Sorry, I just had to throw that out
4 there.
5 MEMBER CHASE: I would love to be on Ninth
6 if I could but there's no spot for me.
7 MEMBER ROTHERMEL: Anywhere there's an
8 access point for emergency vehicles to the Boardwalk
9 they shouldn't be blocked in any way.
10 CHAIRPERSON: Okay. That will be
11 included. Adjust times, we're all -- well, to 11:00
12 p.m. or that run similar to what the liquor board
13 allows for noise.
14 MEMBER KNIGHT: Ending at 11:00 p.m.
15 CHAIRPERSON: Ending at 11:00 p.m.
16 MEMBER KNIGHT: Weekdays, weekends.
17 MEMBER CHASE: What about nonamplified
18 music? That can be just as loud as amplified.
19 CHAIRPERSON: At that point you fall under
20 the noise ordinance.
21 MEMBER CHASE: Under police jurisdiction?

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1 CHAIRPERSON: Right. If you have amped
2 music --
3 MEMBER GERACHIS: I thought it was no amp.
4 CHAIRPERSON: Well, no, if you have music
5 and you're playing it, it has to be done by 11
6 o'clock.
7 MEMBER GERACHIS: No music after 11:00.
8 CHAIRPERSON: I would guess --
9 MEMBER CHASE: I think the City has
10 already addressed with the ACLU and things like that
11 about the amplification. That's kind of why it's up
12 there to begin with. We have to be able to amplify
13 ourselves.
14 MEMBER GERACHIS: I understand that.
15 You're saying no music after 11:00.
16 MEMBER KNIGHT: No music after 11:00.
17 MEMBER GERACHIS: Seven days a week.
18 CHAIRPERSON: So the second one is no
19 music after 11:00 p.m. seven days a week. All
20 right. Box size. As the report reads right now
21 it's 10 by 10 is the maximum size for a box.

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1 MEMBER CHASE: Even I think that's too
2 large for some streets. I'd say just let the City
3 determine based on the street no more than two
4 people.
5 MEMBER KNIGHT: How big is your space?
6 You said 12 by 8 maybe?
7 MEMBER CHASE: Mine is about an 8 by 12.
8 It's about the same equivalent of a 10 by 10. It's
9 just more length-wise. I take up roughly 35 to
10 40 percent of a street end and I know what street
11 ends I can and can't work at, and I prefer not being
12 at like Second or other streets that actually have
13 art or -- I try to be away from certain things. But
14 a 10 by 10 out there on that Boardwalk even I know
15 is not feasible. 10 feet away from the tram lane
16 you're a little far on to the Boardwalk. I encroach
17 on to the Boardwalk give or take 2 to 3 feet but I
18 also make sure that I'm 4 to 5 feet away from the
19 tram lane itself. I'll say a percentage width-wise.
20 MEMBER KNIGHT: What's 8 by 12?
21 MEMBER ROTHERMEL: I don't know. I

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1 think --
2 MEMBER GERACHIS: It's a lot of space.
3 MEMBER ROTHERMEL: It is. It's a lot of
4 space. Again, the whole idea in these court cases
5 is to allow the freedom of expression but it doesn't
6 say we need to accommodate a business, and the more
7 you get into making these things bigger the more
8 you're accommodating a business.
9 CHAIRPERSON: I don't think we're making
10 them bigger. 12 by 8, that's 96 square feet. 10 by
11 10 is a hundred square feet. And they have a
12 history of being there. The Court has relied to
13 some extent on the history of what's happened
14 before. So I still think this, I mean, the report
15 says the max space can be 10 by 10 and I think it's
16 all based upon the City's survey of what's out
17 there. Instead of making it -- I mean, that's going
18 to determine the size of the spaces. Once they get
19 out there and actually look at where things are and
20 the street ends. So, I mean, at a max 10 by 10
21 that's the biggest it can ever be. Obviously they

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1 can be smaller.
2 MEMBER KNIGHT: So it will be the City's
3 discretion?
4 CHAIRPERSON: Yeah. I mean, and I assume
5 Terry is not going to go out there and just mark the
6 boxes off and that's going to be it. The City
7 Council will have to address the City engineer's
8 recommendations in this and decide. And I mean, the
9 City Council may say 10 by 10's too big. We're
10 going to do two by two. Ultimately all we're doing
11 is giving the City what we felt came out of this but
12 they obviously, I mean, or they can say the space
13 can be 10 by 30. But this is what we have gleaned
14 in this.
15 MEMBER ROTHERMEL: When we're saying, just
16 for clarification, the 10 by 10 space is for what
17 the performer will utilize, not what the entire
18 space including customers?
19 MEMBER GERACHIS: Once you get a group of
20 people around, it's going to be 30 by 30.
21 CHAIRPERSON: Yeah. But the people around

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1 it are not in question at this point.
2 MEMBER ROTHERMEL: Really the people
3 around it are some of the problems that we have.
4 The performers create that problem which creates
5 another problem. That's why getting up to a 10 by
6 10 space, I mean, I just can't see, you know, Terry
7 or Hal or whoever it is, they're going to need some
8 kind of guidance. We're going to say no more than
9 two and they're going to say all right, what size
10 does this have to be. You know? I don't know. I
11 think we need to be clearer with --
12 MEMBER GERACHIS: They should at least be
13 four feet away from any tram lane because if people
14 have to move every time --
15 CHAIRPERSON: That's addressed in the
16 report and also the fire hydrants are addressed in
17 the report and the benches are addressed in the
18 report.
19 MEMBER KNIGHT: How many 10 by 10
20 performers or how many hundred square feet of
21 performers are out there? You and how many others

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1 and where?
2 MEMBER CHASE: You got me, then you have
3 one on Third Street, the other spray paint artist,
4 and then the other large shows are mainly down south
5 on South Division.
6 MEMBER KNIGHT: Do they use 10 by 10
7 square foot?
8 MEMBER CHASE: They use larger because of
9 what they do. They utilize pretty much almost the
10 entire South Division Square.
11 MEMBER KNIGHT: So these are people at
12 South Division Street you referred to earlier?
13 MEMBER CHASE: Yes. But North and South
14 Division, Pacini's taken pictures but the only
15 people I know of is me and the other spray paint
16 artists that acquire, you know, 10 by 10.
17 CHAIRPERSON: The magician.
18 MEMBER CHASE: But his actual space is
19 small.
20 CHAIRPERSON: He takes up a big space.
21 MEMBER KNIGHT: Because of the --

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1 CHAIRPERSON: Yes.
2 MEMBER KNIGHT: But using history you can
3 perhaps limit it to three 10 by 10s and let it go at
4 that and have a maximum of three 10 by 10s and maybe
5 satisfy the Courts from the history aspect of it.
6 MEMBER CHASE: If you try to maintain a
7 distance of at least two to three from the tram.
8 MEMBER KNIGHT: You said there were three
9 guys using a 10 by 10 right now.
10 MEMBER CHASE: Yeah. One's down south, me
11 and -- we're pretty much right on, if we recommend a
12 10 by 10 we got to say how far from the tram.
13 MEMBER ROTHERMEL: Well, you know, some
14 other community had smaller boxes, a couple of
15 larger boxes. I can't remember what community that
16 was but, you know, maybe that's a way of doing it.
17 But maybe it's not --
18 MEMBER GERACHIS: Isn't that what you're
19 saying?
20 MEMBER KNIGHT: The Court has a history of
21 use, whatever. That's why I said there's three guys

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1 who do 10 by 10s. So that's how many --
2 MEMBER ROTHERMEL: Maybe it's not 10 by
3 10. Maybe it's no more than a hundred square feet
4 or no more than -- or maybe it's a square footage
5 issue. Depending on how it fits, it might be an 8
6 by 12 or --
7 MEMBER CHASE: That's kind of why I went
8 with the percentage because even just that simple
9 square footage. Street by street is different. If
10 you limit it to 40 percent per street that solves a
11 lot of that square footage issue.
12 MEMBER ROTHERMEL: No more than 300 square
13 foot areas. You just picked up 4 square feet.
14 MEMBER CHASE: My main concern is I don't
15 want that 10 by 10 because they're out on the
16 Boardwalk too far.
17 MEMBER KNIGHT: That's probably a hundred
18 square feet.
19 CHAIRPERSON: A hundred square feet based
20 on its environment. Fire hydrants.
21 MEMBER ROTHERMEL: Based on the area that

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1 it goes within. There's going to be an area where
2 they can get a hundred square feet and there's going
3 to be an area where they can't get anywhere near
4 that.
5 MEMBER CHASE: Believe it or not, if you
6 go two performers per street all the way from Jolly
7 Rogers all the way up each one of those spaces can
8 easily accommodate anywhere from 80 square feet to a
9 hundred square feet all the way up. That's only
10 with two performers per block because the average
11 width of the street is anywhere from 25 to 35 feet
12 wide.
13 CHAIRPERSON: Is everyone good on that?
14 Don't set it 10 by 10 but no more than three
15 100-square foot boxes based on the area and based on
16 the survey by the City.
17 MEMBER ROTHERMEL: Within that, within our
18 area Ninth Street --
19 MEMBER KNIGHT: First to Ninth.
20 CHAIRPERSON: All right. All in favor?
21 MEMBER CHASE: I would just strike down

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1 the three. You can still have a hundred square foot
2 and only two performers per street. I'd say no more
3 than a hundred square feet per performer and allow
4 the City to determine the number of performers and
5 boxes per street.
6 MEMBER ROTHERMEL: No. I think we need to
7 come up with the number of performers.
8 CHAIRPERSON: The one we were just
9 discussing was no more than 300 square foot boxes
10 based on the area. All in favor?
11 All right. Five oh.
12 Weekly license or the registration
13 process. So we'd like them to register. In the
14 report it says a week, so if you have another
15 suggestion feel free to make it. I mean, as it sits
16 right now they register beginning Mondays. For the
17 following week they get an assigned space. At the
18 registration they provide some form of ID and they
19 give some description of what they are going to do.
20 So as I've heard the conversation you're
21 fine with that part of it. And also at the

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1 registration point you would like them to provide
2 proof of insurance, hold harmless, and require some
3 fee to accommodate the processing of that.
4 MEMBER KNIGHT: I think the only problem
5 we've got is how many days can they have a space.
6 CHAIRPERSON: Okay. Do you want to change
7 the length of time that they can do it?
8 MEMBER ROTHERMEL: I would prefer to
9 shorten it.
10 MEMBER GERACHIS: I would too.
11 CHAIRPERSON: What do you suggest?
12 MEMBER GERACHIS: Logistically how do you
13 do it, though?
14 CHAIRPERSON: Then it becomes a question
15 of the logistics and what the City is willing to --
16 MEMBER ROTHERMEL: Seven days is too long,
17 right? That's what we kind of got a consensus.
18 MEMBER GERACHIS: Or they got a 7-day
19 permit --
20 MEMBER ROTHERMEL: Is this a permit?
21 CHAIRPERSON: The permit is part of the

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1 amendment.

2 MEMBER ROTHERMEL: Is it a seasonal permit

3 for one year or is it a seasonal permit for

4 one week? I don't know the answer to that. I'm

5 just asking. Do you know what I mean?

6 MEMBER KNIGHT: My suggestion was to get a

7 permit for the year. If you sign up for that permit

8 it's good from like May 1st to April 30th next year.

9 If you sign up for it in July it's still the same

10 fee and it still expires on April 30th of the next

11 year.

12 CHAIRPERSON: A processing fee. It's not

13 a license.

14 MEMBER KNIGHT: But then you've got to

15 come in and register for your spot, whatever we

16 determine.

17 MEMBER ROTHERMEL: All right. It's a

18 yearly thing and it's a nominal kind of fee because

19 it's just paying for that person to administer the

20 process.

21 CHAIRPERSON: Um-hmm.

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1 MEMBER ROTHERMEL: I think seven days is

2 too long. Let's auction it off. Is it six? Is it

3 five? Is it four?

4 MEMBER KNIGHT: Maybe it's twice a week.

5 Maybe you have a registration for the weekend.

6 Friday, Saturday and Sunday. And another

7 registration for Monday through Thursday. I mean,

8 City Hall is not going to be open on the weekend.

9 MEMBER ROTHERMEL: Right. Right.

10 MEMBER KNIGHT: So you're not going to be

11 able to come in here on the weekend and get your

12 permit. So I don't know how else you split it.

13 CHAIRPERSON: That seems to be -- I mean,

14 the most you're going to get is four days.

15 MEMBER KNIGHT: Three and four. Three and

16 four.

17 CHAIRPERSON: Right. Does that work?

18 MEMBER CHASE: My only worry is City Hall

19 being inundated twice a week with performers.

20 MEMBER KNIGHT: Well, that's where our

21 part-time employee is going to come in. That will

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1 have to deal with that.

2 MEMBER CHASE: But you still have them

3 wandering through the halls.

4 MEMBER GERACHIS: We're creating jobs.

5 MEMBER ROTHERMEL: Yeah, we're creating

6 jobs.

7 MEMBER CHASE: I would say register on

8 Monday, register on Friday. Those would be the

9 days, right? Fridays for the weekend and Mondays

10 for the week.

11 CHAIRPERSON: So when you register on

12 Monday you're registering for Monday, Tuesday,

13 Wednesday, Thursday?

14 MEMBER CHASE: Yes.

15 CHAIRPERSON: And when you register Friday

16 you're registering for Friday, Saturday, Sunday.

17 Right.

18 MEMBER CHASE: For Friday, Saturday,

19 Sunday.

20 MEMBER ROTHERMEL: I'd rather split it up.

21 I'd rather split it up with no more than two or

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1 three days in the same location. I mean, I just

2 think that's where you --

3 CHAIRPERSON: I think at that point then

4 you're, I think at that point it becomes a

5 nonstarter here. I mean, I think once a week is

6 going to be a hard sell to the City. Twice a week

7 is -- I mean, three times a week makes it very

8 difficult to handle administratively.

9 MEMBER CHASE: Are we going to do this is

10 set it at one week? Are we able to come back in,

11 say, mid-June when we actually have experience with

12 the week registration thing and modify our

13 recommendation?

14 MEMBER ROTHERMEL: Our jurisdiction or --

15 MEMBER CHASE: I know it ends.

16 CHAIRPERSON: To start with, why don't we

17 suggest the Monday through Thursday and the Friday

18 through Saturday. That at least breaks the week up

19 and you get two different people over the course of

20 week..

21 MEMBER KNIGHT: That's my suggestion. I'm

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1 for that.

2 MEMBER GERACHIS: I think that's the best

3 of the alternatives.

4 CHAIRPERSON: Mark? All in favor? Four.

5 All right. The no amplification thing, we kind of

6 concluded amongst ourselves is, I mean, there's no

7 need even to amend that. Cutoff, insurance

8 liability, permit, no signs. We all good with not

9 putting up a sign saying -- all in favor of that?

10 Five.

11 Caroline Street. Allowing the performers

12 to use Caroline Street as a --

13 MEMBER CHASE: You could allow them. I

14 don't think any of them's going to actually use it.

15 Just because it's facing away from the Boardwalk.

16 CHAIRPERSON: It's in the report.

17 MEMBER GERACHIS: I understand what you're

18 saying, though. It seems like we endorse the event

19 then.

20 MEMBER KNIGHT: They say to promote it but

21 not endorse it. I don't understand how you promote

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1 it and not endorse it. I don't understand how you

2 get your audience back on the beach to look at this

3 performance. I don't really think the City should

4 have their Caroline Street amphitheater be used for

5 street performers.

6 CHAIRPERSON: Any problems with that?

7 Five-oh on that. Okay.

8 Page 55, nonaggressive.

9 MEMBER KNIGHT: Yeah. That's in the

10 previous law, I think. Ordinance.

11 CHAIRPERSON: Are we all in agreement on

12 that one?

13 Box delineation other than paint. And

14 rope.

15 MEMBER ROTHERMEL: I'm all for getting rid

16 of the ropes.

17 CHAIRPERSON: Okay. We're talking about

18 something other than painting the boxes. Some other

19 way of delineating where the boxes are. Do we

20 paint? Are you guys all right with just painting

21 the boxes on the Boardwalk and being done with it?

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1 MEMBER CHASE: I would say if the

2 performer knows what is going to be at the street

3 leave it up to him knowing.

4 MEMBER ROTHERMEL: I think we need to

5 delineate a space and I think we can delineate a

6 space that, we're letting the City figure out where

7 the spaces are let's let them figure out how to

8 delineate it.

9 CHAIRPERSON: How about delineating it

10 other than painting it? Work?

11 MEMBER ROTHERMEL: I don't see how

12 painting a line, you know, is --

13 MEMBER KNIGHT: How many years did we look

14 at a painted --

15 MEMBER GERACHIS: It's almost like if you

16 paint it they're going to use every bit of space

17 they can. If you don't they may only stand there

18 with a guitar. So I think knowing where the space

19 is is almost enough and then if they exceed it, then

20 they can be called out.

21 CHAIRPERSON: Let's go back a little bit.

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1 When they register they will get rules and

2 regulations. They will also get a map that shows

3 them where the space is. So, I mean, I would prefer

4 to see initially without it being painted and if it

5 requires down the line they paint it --

6 MEMBER KNIGHT: You said drop spikes. Did

7 you --

8 CHAIRPERSON: Yeah.

9 MEMBER KNIGHT: -- literally paint nails

10 or --

11 CHAIRPERSON: Yeah. I mean, they do it

12 all the time in the street. There's a way that they

13 can mark it other than painting it and other

14 than putting a line on the Boardwalk.

15 MEMBER KNIGHT: I think it needs to be

16 strictly marked. Something needs to be there.

17 CHAIRPERSON: The amendment I have is to

18 delineate the space other than painting it.

19 MEMBER KNIGHT: Visibly or whatever.

20 CHAIRPERSON: Are we all good with that

21 one?

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1 MEMBER GERACHIS: Sure.
2 CHAIRPERSON: All right. Five-oh again.
3 Mark has size of box and the percentage of street.
4 I think we have addressed that.
5 MEMBER CHASE: Yes.
6 CHAIRPERSON: So you're good without
7 pushing that forward?
8 MEMBER CHASE: Yeah. I still think that
9 delineating a space should be percentage and that
10 apply per street. That would be a good guidance for
11 the City, 40 percent per performer all the way up.
12 It's something for them to look at. It's a hard
13 number and it's a good recommendation for them to
14 proceed. And then it adjusts according to the
15 street. That's what we were looking at. We were
16 looking at that hard number to give them.
17 40 percent width of that street, that would be a
18 good hard number for whoever is out there measuring
19 to be able to go by.
20 CHAIRPERSON: Any thoughts?
21 MEMBER KNIGHT: What's this 40 percent?

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1 How is that --
2 MEMBER CHASE: Like if you have a 30-foot
3 street, 40 percent is roughly 12 feet because then
4 you have the fire hydrant right in the middle
5 because you have 20-foot. You have a 20-foot
6 street, it's 40 percent of 20 feet is roughly 9 feet
7 wide. That way the 40 percent would itself adjust
8 itself up and down the Boardwalk. It's that hard
9 number I guess that we were looking for to give a
10 recommendation. Some kind of guidance for whoever
11 is out there measuring.
12 MEMBER ROTHERMEL: I just see the
13 percentage thing I think is just too subjective.
14 MEMBER CHASE: If it wasn't, I mean, if we
15 delineate the boxes whoever measures it they have
16 that 40 percent. Otherwise, trying to make it
17 universal, all our streets are different, to make it
18 universal 8 feet every street then you'll have some
19 that are right on top --
20 MEMBER GERACHIS: 40 percent may not work.
21 Even --

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1 MEMBER KNIGHT: You put it at 40 percent
2 you might not be able to get your 10 by 10 anyway
3 with somebody else. I think we've covered this.
4 The size is up to the City.
5 CHAIRPERSON: We've set the maximum and we
6 set the maximum number of large boxes and then it's
7 going to be based on their survey of what they can
8 do. All right. So we can cross that one off.
9 Eliminate South Division from the regs.
10 MEMBER KNIGHT: We're making South
11 Division a first come first served. How many
12 performers are allowed on South Division?
13 MEMBER ROTHERMEL: Isn't South Division
14 that we ramp onto the Boardwalk?
15 MEMBER CHASE: It's close but right to the
16 Boardwalk. On the west side there's no ramp,
17 emergency ramp. It's a loading dock. That's the
18 main area where the juggler, the unicyclist, that's
19 their safe area. That's the best place for them.
20 Any further north and they really become more of a
21 hazard with the children and things like that,

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1 especially with the unicycle being up high. And
2 traditionally they work it out themselves down
3 there.
4 CHAIRPERSON: Would you consider them more
5 like a strolling entertainer than a placed
6 entertainer?
7 MEMBER CHASE: I wouldn't call them
8 strolling.
9 CHAIRPERSON: But they're more mobile.
10 MEMBER CHASE: What do you mean by mobile?
11 CHAIRPERSON: Well, if you're on the
12 unicycle you're moving around.
13 MEMBER CHASE: Yeah. It's part of his
14 prop. He's an acrobat so it's kind of --
15 MEMBER ROTHERMEL: I don't like taking any
16 space out of this except for emergency purposes.
17 CHAIRPERSON: Okay.
18 MEMBER KNIGHT: If it's first come first
19 served, then anyone can show up there and kick this
20 guy out. The unicyclist has nowhere to go.
21 CHAIRPERSON: All right. Vote? Who is in

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1 favor of eliminating South Division Street and
2 making it first come first served?
3 MEMBER ROTHERMEL: Eliminating?
4 CHAIRPERSON: Taking South Division Street
5 out of the registration process and making it a
6 first come first served --
7 MEMBER CHASE: That would also allow for
8 the ample alternatives --
9 MEMBER ROTHERMEL: If we're going to
10 regulate it we're going to regulate it.
11 CHAIRPERSON: All right. We got it.
12 That's 3-1.
13 Rope. In the task force report,
14 preliminary report it suggests eliminating rope.
15 Mark's amendment would be to allow rope.
16 MEMBER CHASE: Safety for me.
17 MEMBER ROTHERMEL: I don't like the idea
18 of rope.
19 MEMBER CHASE: We all know that we have
20 fireworks out there. They rope off the beach.
21 CHAIRPERSON: With caution tape.

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1 MEMBER CHASE: And caution tape. But
2 either way they rope it off, they segment it. So
3 you can't walk out there. Would you eliminate that
4 and allow the public to walk?
5 MEMBER ROTHERMEL: It's actually, it's a
6 function of a public safety official creating this
7 demarcation, and that's the difference. Here it's
8 someone creating a demarcation for perceived safety
9 issues.
10 MEMBER CHASE: I mean, the concept I'm
11 getting at is just because you don't like how a rope
12 looks you're willing to sacrifice safety.
13 MEMBER ROTHERMEL: No.
14 MEMBER GERACHIS: Personally you shouldn't
15 be allowed to do anything on the Boardwalk that
16 requires being roped off. Quite frankly, it
17 shouldn't be so dangerous that a kid could wander in
18 and get hurt.
19 MEMBER CHASE: It's at a certain footage
20 it's perfectly 100% safe what I do. It's just my
21 concern is I know kids, I know the attention span.

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1 We all know what the attention span is for tourists
2 out there. They don't watch their kids.
3 MEMBER GERACHIS: How is the child going
4 to get hurt? Just tell me. I don't know. I've
5 never seen it.
6 MEMBER CHASE: No. I mean, no one has
7 ever gotten hurt because I had that rope. And
8 little kids, you know, even 3, 4 years old they've
9 been taught don't cross the line. Don't cross the
10 rope. It allows that --
11 MEMBER GERACHIS: I'm asking how would
12 they get injured? How would they if they --
13 MEMBER CHASE: How would they?
14 MEMBER GERACHIS: Yes. I don't know what
15 --
16 MEMBER CHASE: None so far have ever been
17 injured.
18 MEMBER GERACHIS: How would they? I'm
19 asking like what is the situation --
20 MEMBER CHASE: As soon as I see someone
21 coming in I stop and I shut down.

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1 MEMBER GERACHIS: I understand that. But
2 what is it that you do that could hurt them if they
3 were to get in there?
4 MEMBER CHASE: They couldn't get hurt.
5 They would just --
6 MEMBER GERACHIS: Then you don't need the
7 rope.
8 MEMBER CHASE: -- have their clothes
9 damaged.
10 CHAIRPERSON: They would interfere with
11 what you're doing.
12 MEMBER CHASE: They're interfering.
13 MEMBER GERACHIS: It's really an
14 inconvenience for you. It's not a safety issue.
15 It's more of an inconvenience for you if they wander
16 in.
17 MEMBER CHASE: If they wander in.
18 MEMBER GERACHIS: I'm against the rope.
19 MEMBER KNIGHT: The rope is just lying on
20 the Boardwalk, right?
21 MEMBER CHASE: Mine is elevated just

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1 slightly. It's about a foot off the Boardwalk.
2 MEMBER GERACHIS: The rope is more for you
3 to do what you do without being interfered with.
4 MEMBER CHASE: And it's also for my crowd
5 control. It's also for safeguarding. Because I'd
6 rather be safe against any potential.
7 MEMBER GERACHIS: But I haven't heard an
8 answer what's unsafe.
9 MEMBER CHASE: Nothing's unsafe.
10 MEMBER GERACHIS: Then you don't need a
11 rope.
12 MEMBER CHASE: It's always that unforeseen
13 thing. A little kid could come running up. He
14 could jump in the middle of my painting when I'm
15 painting.
16 MEMBER ROTHERMEL: I get what you're
17 saying, Mark. But really you use the Boardwalk for
18 your retailing of your pictures.
19 MEMBER CHASE: I'm not a retailer.
20 MEMBER ROTHERMEL: And you're selling
21 them. You're in retail.

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1 MEMBER GERACHIS: Do you accept credit
2 cards?
3 MEMBER CHASE: Yes, I do.
4 MEMBER ROTHERMEL: The point is you're
5 creating that space to protect the area that you're
6 displaying your merchandise, and I just don't want
7 to see rope and creating that space.
8 MEMBER CHASE: I've had people walk
9 through my setup. I've had people step in the
10 middle of it.
11 CHAIRPERSON: All right. That's a
12 philosophical difference.
13 MEMBER CHASE: Yes.
14 CHAIRPERSON: So Mark's amendment was
15 allow ropes.
16 MEMBER CHASE: I'd rather be safe than
17 sorry.
18 MEMBER GERACHIS: Philosophically I would
19 like the ropes deleted.
20 MEMBER ROTHERMEL: Removed.
21 MEMBER KNIGHT: I don't see a need for

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1 elevated ropes. Remove.
2 MEMBER ROTHERMEL: Or laying on the
3 ground.
4 MEMBER KNIGHT: Or laying on the ground.
5 CHAIRPERSON: That takes care of that.
6 The rope stays as is in the draft report.
7 Okay. We talked about noise ordinance.
8 Generators. The draft report says to eliminate
9 generators. Mark has asked for generators to be
10 retained in some form whether gas, solar. Any
11 discussion, more discussion on that?
12 So it's stay with the report and ban
13 generators or have a discussion about allowing
14 alternative generators.
15 MEMBER GERACHIS: My vote is to ban
16 generators.
17 MEMBER ROTHERMEL: Ban generators.
18 MEMBER KNIGHT: Ban generators.
19 CHAIRPERSON: Mark?
20 MEMBER CHASE: That goes against what the
21 Fire Marshal actually said, but I'm against it.

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1 CHAIRPERSON: All right. I think we've
2 covered all of the amendments that we brought up in
3 our prior discussion. Is everybody good with what
4 we have done for amendments to the report? Anybody
5 have anything else for the good of the cause?
6 MEMBER ROTHERMEL: We were talking about
7 the possibility of having two or more people in the
8 same area. I mean, one person can't take two
9 squares, correct?
10 MEMBER CHASE: No.
11 CHAIRPERSON: No. You get one per person.
12 MEMBER ROTHERMEL: Okay. I just wanted to
13 make sure.
14 CHAIRPERSON: Nothing else? We all good?
15 All right, great. So we need to vote on the draft
16 report from the task force as amended. So are we --
17 MEMBER KNIGHT: Before we vote, I think
18 the task force, I know this is -- our focus has been
19 this but I think perhaps it would be good to come
20 back later this summer and reevaluate what's going
21 on and not totally dissolve ourselves. I don't know

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1 if we can keep ourselves going.
2 MEMBER ROTHERMEL: I don't know if we can.
3 I think someone else has to give us juice.
4 CHAIRPERSON: We can clearly add that to
5 our draft report that at some point during the
6 summer after some experience if the City drafts a
7 new ordinance that they reconvene us and we have
8 another conversation.
9 MEMBER KNIGHT: I think that's a good
10 idea.
11 CHAIRPERSON: Okay.
12 MEMBER ROTHERMEL: I'm for it. I'd wait
13 until September rather than --
14 MEMBER GERACHIS: I'm for it.
15 CHAIRPERSON: So I need a vote on the
16 report, the draft report as amended. All in favor?
17 MEMBER GERACHIS: Make a motion.
18 CHAIRPERSON: Go ahead, make a motion. Do
19 it the right way.
20 MEMBER KNIGHT: Motion to accept the draft
21 report as amended.

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1 CHAIRPERSON: Second?
2 MEMBER GERACHIS: I second it.
3 CHAIRPERSON: All in favor? Show the vote
4 was 5 zero. The next step in this is the report
5 will be revised to show our amendments and then it
6 will be presented to the City Council and at that
7 point we have done our job with the exception of
8 meeting later to discuss what happened. But at that
9 point the City Council will take this and move
10 forward and draft an ordinance if they feel like
11 they want to, or they can leave it as it is. But
12 we've given them the information they need now and
13 hopefully it's enough for them to craft an
14 intelligent ordinance that eliminates some of the
15 concerns that we've heard in these public hearings
16 and allows everybody, the private side and the
17 performers, to work together and make the Boardwalk,
18 or continue to make the Boardwalk a place where
19 people want to come, a vibrant place. With that
20 said, motion to adjourn?
21 MEMBER ROTHERMEL: So moved.

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1 MEMBER GERACHIS: Second.
2 CHAIRPERSON: Thank you. Thank you,
3 everybody.
4 (Proceedings concluded -- 2:42 p.m.)
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1 CERTIFICATE OF REPORTER
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3
4 I hereby certify that the foregoing is a
5 true and accurate transcript of the proceedings in
6 the aforementioned matter.
7
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11 _____
12 Alfred A. Betz, Court Reporter
13
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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARK CHASE,
Plaintiff,

v.

TOWN OF OCEAN CITY,
Defendant.

Civil Action No. ELH-11-1771

PRELIMINARY INJUNCTION

Mark Chase, plaintiff, has filed a Complaint (ECF 1) against the Town of Ocean City, Maryland (“Ocean City”), defendant, alleging that several of Ocean City’s ordinances violate his right to free expression, guaranteed by the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights. Plaintiff also filed a Motion for Preliminary Injunction (“Motion”) (ECF 2), under Rule 65 of the Federal Rules of Civil Procedure. After the Court received written briefing on the Motion, a hearing was held on August 23, 2011, at which both parties presented testimony, documentary evidence, and argument of counsel.

The Court has considered the evidence and argument presented at the hearing and in the parties’ written submissions. For the following reasons, and as stated more fully in the Memorandum Opinion issued this date, the Court finds that a preliminary injunction is warranted in this case because plaintiff has demonstrated a substantial likelihood that he will prevail on the merits as to certain of his claims; that, in the absence of such preliminary injunctive relief, plaintiff will suffer irreparable injury, in the form of deprivation of his right to freedom of expression, as guaranteed by the First Amendment and Article 40 of the Maryland Declaration of

Rights; that the balance of the equities favors plaintiff; and that an injunction is in the public interest.

Accordingly, it is this 9th day of September, 2011, by the United States District Court for the District of Maryland, ORDERED:

1. Until the conclusion of this litigation, or subsequent Order of the Court, the Town of Ocean City, Maryland, and its officers, agents, servants, employees, attorneys, and all persons acting for them or in active concert or participation with them, **shall not enforce** the following provisions of the Code of the Town of Ocean City (1999, Supp. No. 18, May 16, 2011):
 - a. § 62-2, as applied to any person engaged in the public sale, rental, or exchange for a donation of “Expressive Material,” as defined herein;
 - b. § 62-3;
 - c. § 62-4, as applied to any person engaged in the public sale, rental, or exchange for a donation of “Expressive Material,” as defined herein; or
 - d. § 62-5(b)(9), as applied to any person engaged in the public sale, rental, or exchange for a donation of “Expressive Material,” as defined herein;
 - e. § 62-5(b)(10); and
 - f. § 62-7, as applied to any person who, in the absence of this injunction, would be required to register as an “unlicensed solicitor” pursuant to § 62-3.
2. For purposes of this Preliminary Injunction, “Expressive Material” is defined as any item or items that (1) have been created, written, or composed by the person who sells, rents,

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2012 FEB -6 P 3:42
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION
CLERK'S OFFICE
AT BALTIMORE

MARK CHASE

Plaintiff

v.

TOWN OF OCEAN CITY

Defendant

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BY _____ DEPUTY

Civil Action No. 11-CV-01771 ELH

CONSENT DECREE

This action was instituted by Plaintiff, Mark Chase ("Plaintiff"), against Defendant, Town of Ocean City ("Defendant"), alleging that various town ordinances violate his right to free expression, guaranteed by the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights. The ordinances at issue impose several restrictions on the activities of "peddling, soliciting, hawking or street performing" on the boardwalk, prohibit all sales on and near the boardwalk, and establish registration requirements. Plaintiff seeks a declaratory judgment, preliminary and permanent injunctive relief, compensatory and punitive damages, and an award of attorneys' fees and costs. See Complaint at 12-13 (ECF 1). By Order dated September 9, 2011, this Court issued a Preliminary Injunction herein.

The Plaintiff and Defendant desire to resolve this action without the time and expense of continued litigation, and they desire to enter a Consent Decree, which will resolve this action.

The Court has examined this Consent Decree and finds that it is reasonable and just and in accordance with the Federal Rules of Civil Procedure. Therefore, upon due consideration of the record herein and being fully advised in the premises, it is ORDERED, ADJUDGED AND DECREED:

Scope of Decree

1. This Consent Decree resolves all issues and claims alleged in the Complaint filed by the Plaintiff in this action against the Defendant.
2. This Consent Decree shall be in effect permanently from the date it is entered by the

Court unless it is dissolved, amended or otherwise modified by subsequent Order of this Court. This Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Consent Decree, including issuing such orders as may be required to effectuate the purposes of the Consent Decree.

3. This Consent Decree, being entered with the consent of the Plaintiff and Defendant, and the Memorandum Opinion under date of September 9, 2011, shall constitute an adjudication and finding on the merits of the case.

Accordingly, it is this 6th day of February, 2012, by the United States District Court for the District of Maryland, ORDERED:

1. The Town of Ocean City, Maryland, and its officers, agents, servants, employees, attorneys, and all persons acting for them or in active concert or participation with them, shall not enforce, as applied to the Plaintiff and any other person, the following provisions of the Code of the Town of Ocean City (1999, Supp. No. 18, May 16, 2011):

- a. § 62-2, as applied to any person engaged in the public sale, rental, or exchange for a donation of "Expressive Material," as defined herein;
- b. § 62-3;
- c. § 62-4, as applied to any person engaged in the public sale, rental, or exchange for a donation of "Expressive Material," as defined herein; or
- d. § 62-5(b)(9), as applied to any person engaged in the public sale, rental, or exchange for a donation of "Expressive Material," as defined herein;
- e. § 62-5(b)(10); and
- f. § 62-7, as applied to any person who, in the absence of this injunction, would be required to register as an "unlicensed solicitor" pursuant to § 62-3.

2. For purposes of this Permanent Injunction, "Expressive Material" is defined as any item or items that (1) have been created, written, or composed by the person who sells, rents, or exchanges them for a donation; (2) are inherently communicative; and (3) have only nominal utility apart from their communicative value.

- a. By way of example, and not limitation, the following items ordinarily are inherently communicative and have only nominal utility apart from their communicative value: books, pamphlets, cassette tapes, compact discs, digital video discs, paintings, photographs, and sculptures.

- b. By way of example, and not limitation, the following items ordinarily either are not inherently communicative and/or have more than nominal utility apart from their communicative value: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals.
3. This Permanent Injunction does not prohibit the enforcement of any provision of the Code of the Town of Ocean City, Maryland, other than the provisions expressly enumerated herein.
4. The Plaintiff and Defendant shall bear their own costs and attorneys' fees, except as otherwise agreed to by the parties.
5. The undersigned counsel of record in the above captioned action hereby consent, on behalf of their respective clients, to the entry of the foregoing Consent Decree.
6. The Clerk is directed to docket this Permanent Injunction immediately and provide a certified copy of this Permanent Injunction to each party as soon as practicable.

7. *The Clerk is directed to close this case.* ELH
For Defendant: For Plaintiff:

_____/s/
Guy R. Ayres III
Ayres, Jenkins, Gordy & Almand, P.A.
6200 Coastal Highway, Suite 200
Ocean City, MD 21842
Attorney for Town of Ocean City

_____/s/
John R. Garza
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Rockville, MD 20850
Attorney for Mark Chase

Ellen L. Hollander

Ellen Lipton Hollander
United States District Judge

Chapter 62 - PEDDLERS AND SOLICITORS

FOOTNOTE(S):

--- (1) ---

Charter reference— Authority relative to hawkers and peddles, § C-414(31). [\(Back\)](#)

Cross reference— Businesses, ch. 14; streets, sidewalks and other public places, ch. 74. [\(Back\)](#)

State Law reference— Transient vendors, Ann. Code of Md., Business Regulation article, § 17-20A-01 et seq. [\(Back\)](#)

ARTICLE I. - IN GENERAL

Sec. 62-1. - License required.

Except as herein provided, no person shall engage in or carry on in Ocean City, Maryland, the business, occupation or activity of solicitor, distributor, peddler or hawker of any merchandise or commodity upon the streets or sidewalks of Ocean City, without first having obtained a license for such business, occupation or activity as provided for in chapter 14, article II, Licensed Occupations.

(Code 1972, § 72-1)

Sec. 62-2. - Limitations on commerce on the boardwalk.

It is unlawful for any person, upon the boardwalk or upon its benches, stairs and other fixtures, to engage in the public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services.

(Code 1972, § 72-5.A; Ord. No. 1999-1, 2-16-1999; Ord. No. 1999-12, 4-19-1999)

Sec. 62-3. - Registration of persons exempt from license requirement.

- (a) (1) The City Clerk shall, upon the making of the required oath and upon payment of the administrative fee, established by the Mayor and City Council, allow such person to register as an unlicensed solicitor and shall issue an identification tag or card to such person. The Clerk may waive the making of the oath and/or the administrative fee upon request supported by a valid reason. No person shall carry on such activity without first having obtained the permit required hereunder.
- (2) Registration as an unlicensed solicitor shall be permitted during normal business hours of the Clerk's office except for Fridays or the day before a city holiday, when the registration time shall be limited to between 10:00 a.m. and 2:00 p.m.

(Code 1972, § 72-5.B; Ord. No. 2009-11, 5-18-2009)

Sec. 62-4. - Limitations on commerce on the boardwalk and immediately adjoining public areas.

It shall be unlawful for any person upon the boardwalk or upon its benches, ramps, stairs and other fixtures or upon the Caroline Street pad, or other street-end pads adjoining the boardwalk or upon any other publicly owned surface or street situated within 75 feet of the edge of the boardwalk, or upon South Division Street from Philadelphia Avenue west to the Bay or upon South First Street from Baltimore Avenue east to the Boardwalk to engage in the public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services. This section shall not apply to operation in the restricted area of (1) city-owned or licensed transportation services, (2) telephone service, (3) franchised concessions on city-owned property which was constructed for such use, (4) franchised concessions on the beach for renting of beach equipment and taking photographs, and (5) special events with permits approved by the Mayor and City Council, for Somerset Street from Baltimore Avenue east to

75 feet west of the edge of the Boardwalk, or for South Division Street from Philadelphia Avenue west to the Bay, or for South First Street from Baltimore Avenue east to the Boardwalk.

(Ord. No. 1999-20, 6-21-1999; Ord. No. 2002-13, 5-20-2002; Ord. No. 2006-7, 4-3-2006; Ord. No. 2006-18, 5-15-2006; Ord. No. 2007-5, 4-2-2007)

Sec. 62-5. - Prohibited acts on boardwalk.

- (a) The Mayor and City Council, having determined that the boardwalk is a major tourist attraction with congregations of pedestrians and the boardwalk tram necessitating the regulation of the location of activities, allowed hereunder, for public safety purposes, has determined that the best interest of the public health, safety and general welfare is best served by limiting such activities to the area within the extended boundaries of street ends.
- (b) It shall be unlawful for any person engaging in the permitted activity of peddling, soliciting, hawking or street performing on the boardwalk to:
 - (1) Exercise or perform such activity or display in any area of the boardwalk other than within the area encompassed within the extended boundaries of the street ends, except for the area encompassed within the extended boundaries from the south side of the boardwalk ramp on the south side of N. Division Street to the north side of the boardwalk ramp on the north side of N. Division Street, where such activity is also prohibited.
 - (2) Use anything other than portable tables or chairs for display purposes.
 - (3) Set up any display on or within ten feet of tables, adjacent property entrance or exit, or boardwalk tram lane.
 - (4) Obstruct or block pedestrian or vehicular traffic, the entrance to ramps and stairways to the beach, the entrance to comfort stations, the concrete pads on the east side of the boardwalk, public telephones, or trash receptacles.
 - (5) Reserved.
 - (6) Violate the town's noise ordinances, after being warned by a police officer.
 - (7) Connect to any municipal electric outlet or private electric outlet without the permission of the owner.
 - (8) Use nudity, pornographic materials, or obscenity in any display or performance.
 - (9) Conduct sales or exchanges as prohibited by section 62-4 hereof.
 - (10) Set a price or fee or accept same for observing or participating in a display or performance, other than being a tip the amount of which is not solicited.
 - (11) Handout or distribute any advertising or promotional material which promote an activity, product or service other than that which the peddler, solicitor, hawker or street performer is engaged in as an integral part of the display or performance.
 - (12) Use animals, other than for legitimate ADA purposes, fire or other hazardous materials in a display or performance.
- (b) Any person, partnership, corporation, unincorporated association, or other business entity who shall violate any provision of this section or sections 62-3 and 62-4 hereof shall be deemed to have committed a municipal infraction and be subject to the penalties provisions for municipal infractions set forth in section 1-8(c) of this Code.

(Ord. No. 1998-8, § 72-5.2, 5-18-1998; Ord. No. 2009-11, 5-18-2009; Ord. No. 2011-23, 6-20-2011)

Sec. 62-6. - Manufacturers.

Nothing herein shall apply to manufacturers or employees and agents thereof, located and doing business in this state, selling to licensed dealers or retailers within the corporate limits of Ocean City. The provisions of this article shall apply to manufacturers making sales directly to the consumer.

(Code 1972, § 72-6)

Sec. 62-7. - Applicability of general licensing provisions.

- (a) The provisions of chapter 14, article II of the Code of Ocean City, being general licensing provisions relating to business and trades, shall be applicable to all licenses under this article the same as if specifically set forth herein. It shall be unlawful for any person, licensed or unlicensed, to hawk, peddle or solicit on any city street or public way, boardwalk, beach or any parking lot unless specifically exempted or excepted by chapter 14, article II or this chapter.
- (b) Any person who shall violate section 62-7(a) hereof shall, upon conviction thereof, be deemed guilty of a misdemeanor and subject to a sentence of up to 30 days in jail or a fine of up to \$1,000.00, or both.

(Code 1972, § 72-7)

State law reference— Penalties for ordinance violations, Ann. Code of Md. art. 23A, § 3.

Secs. 62-8—62-30. - Reserved.

ARTICLE II. - PANHANDLING

Sec. 62-31. - Title.

This article shall hereafter be known and cited as the "Panhandling Ordinance."

(Code 1972, § 72-8)

Sec. 62-32. - Definitions.

The following terms, wherever used herein, shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

Panhandling. Any type of begging or accosting of others for money, services, food or any other objects; solicitation of money, services, food or any other objects for which any service or object is offered in return, if the solicitor is not licensed by or registered with Ocean City and said license or registration identification tag is not publicly displayed at the time of said solicitation; the harassment of citizens by persons attempting to entice or procure service, money, food or any other objects by the use of promises, threats, fraud or artifice; or any peddling, soliciting, distributing or hawking in violation of the provisions of section 62-4.

(Code 1972, § 72-9)

Sec. 62-33. - Prohibited acts.

It shall be unlawful for any person to panhandle by accosting another or forcing oneself upon the company of another within the corporate limits of Ocean City.

(Code 1972, § 72-10)

Sec. 62-34. - Exceptions.

The provisions of this article shall not apply to any person soliciting funds or contributions in pursuit of a religious or political activity, or for the purpose of supporting communications on religious, political or

philosophical issues, and not for private profit or other purely commercial purpose, provided that said person complies with the oath, registration and other requirements for unlicensed soliciting as provided for in sections 62-2 and 62-3, and further provided that said persons solicit funds or contributions only in areas designated for unlicensed soliciting by the provisions of section 62-4.

(Code 1972, § 72-10.1)

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARK CHASE,
Plaintiff,

v.

TOWN OF OCEAN CITY,
Defendant.

Civil Action No. ELH-11-1771

MEMORANDUM OPINION

Mark Chase, plaintiff, a self-described “spray paint can artist,” is a visual artist whose medium is quick-drying, gloss-based enamel spray paint. Chase is also a street performer; he creates his paintings in the open air before a live audience. During the spring and summer months, Chase creates his paintings on or about the boardwalk in the resort venue of Ocean City, Maryland, where he sells his paintings to the public.

On June 28, 2011, plaintiff filed suit (ECF 1), against the Town of Ocean City, Maryland (“Ocean City” or the “City”), defendant, alleging that various town ordinances violate his right to free expression, guaranteed by the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights. The ordinances at issue impose several restrictions on the activities of “peddling, soliciting, hawking or street performing” on the boardwalk, prohibit all sales on and near the boardwalk, and establish registration requirements. Plaintiff seeks a declaratory judgment, preliminary and permanent injunctive relief, compensatory and punitive damages, and an award of attorneys’ fees and costs. *See* Complaint at 12-13 (ECF 1).

Presently before the Court is plaintiff’s Motion for Preliminary Injunction (“Motion”) (ECF 2). After the parties submitted memoranda of law and documentary exhibits, *see*

Plaintiff's Memorandum in Support of Motion for Preliminary Injunction ("Mem.") (ECF 2-4); Defendant's Response to Plaintiff's Motion for Preliminary Injunction & Memorandum in Support of Response ("Opp.") (ECF 5), the Court held an evidentiary hearing on August 23, 2011. Testimony was presented by the plaintiff, as well as three Ocean City officials: Richard W. Meehan, the Mayor of Ocean City; Ocean City Fire Chief Chris Larmore; and Corporal Richard Wawrzeniak of the Ocean City Police Department. Several exhibits were also introduced into evidence.¹ For the reasons that follow, I will grant plaintiff's Motion in part and deny it in part, and will preliminarily enjoin certain aspects of the disputed statutory scheme.

Background²

A. Ocean City and Its Boardwalk

Ocean City, Maryland, is a seaside community located on Maryland's Eastern Shore. Situated on a long, narrow spit of land, the City runs north-south along the Atlantic Ocean. It extends for several miles along the coast (*i.e.* north-south), but is only a few city blocks wide (*i.e.* east-west), even at its widest point.

The City is one of Maryland's major summer vacation destinations. According to Mayor Meehan, Ocean City receives around four million visitors every year between mid-May and mid-

¹ "Before or after beginning the hearing on a motion for a preliminary injunction," Rule 65(a)(2) of the Federal Rules of Civil Procedure permits a court to "advance the trial on the merits and consolidate it with the hearing," although the court must "preserve any party's right to a jury trial." At the preliminary injunction hearing, the parties indicated that they did not want to proceed immediately to a trial on the merits.

² The facts are gleaned from the parties' exhibits and the testimony. In addition, I take judicial notice of some basic geographic information that is widely known within Maryland. *See, e.g., United States v. Johnson*, 726 F.2d 1018, 1021 (4th Cir. 1984) (geographical information that is "generally known within the territorial jurisdiction of the trial court" is "especially appropriate for judicial notice") (citations omitted); *Davenport v. City of Alexandria*, 710 F.2d 148, 151 (4th Cir. 1983) (same).

September, and receives another four million visitors during the remaining portion of the year. July and August are the peak months for summer tourism.

The City's easternmost platted street is Atlantic Avenue, which is also known as the boardwalk. The boardwalk is a wooden pedestrian walkway that is located between the ocean beach and the paved streets of Ocean City. It is approximately three miles long, running from South Second Street in the south to about 22nd Street in the north, and between 50 and 75 feet wide. The boardwalk is lined with shops and other attractions for pedestrians.

Although the boardwalk is primarily used only by pedestrians, the City operates a "tram" as a means of public transportation along the boardwalk. Corporal Wawrzeniak described the tram, a wheeled motor vehicle that transports passengers, as being slightly wider than a minivan, and composed of a front vehicle, operated by a driver, towing several trailers, each of which has 10-15 rows of passenger seating. At the southern end of the boardwalk, from South Second Street to Fourth Street, there is a concrete roadway next to the boardwalk, between the boardwalk and the beach, on which the tram operates. North of Fourth Street, the tram runs on the boardwalk.³

There are no restrictions on pedestrian access to the boardwalk. Moreover, there is no admission charge or identification requirement for entry on the boardwalk (or the beach), nor is there any restriction on the number of people who can be on the boardwalk at any given time. In the evenings during the peak months of summer, the boardwalk is highly congested, with

³ Corporal Wawrzeniak testified that the concrete roadway is part of the "boardwalk." Chase differentiated between the concrete roadway and the boardwalk. However, there does not seem to be a dispute that the concrete roadway is considered part of the "boardwalk," as that term is used in the City ordinances at issue in this case.

pedestrians walking along and flocking to the many shops, eateries, and attractions that the boardwalk has to offer. In the day, the boardwalk is a point of access to the beach.

Although the tourist traffic on the boardwalk creates challenges for crowd control, it is very desirable to Ocean City. In Mayor Meehan's words, crowds are "what we want."

Street performers are among the boardwalk's many attractions. Indeed, Mayor Meehan acknowledged that street performers are part of the "experience" that draws visitors to the boardwalk. By Mayor Meehan's estimate, on a clear summer night, as many as 25 to 40 street performers could be performing at various locations along the boardwalk. The parties submitted photographs depicting a variety of street performers, including plaintiff; other painters, caricaturists, and visual artists; magicians and clowns; musicians; and performers in costume portraying pop culture characters such as Spongebob Squarepants and Spiderman.

The crowds that street performers draw on the boardwalk vary considerably, but are significantly larger at night. Corporal Wawrzeniak testified that, on occasion, some performers have drawn "hundreds" of spectators for night performances. According to Corporal Wawrzeniak, the most significant challenge law enforcement encounters with regard to street performers is management of the crowds they attract, so as to ensure safe passage of the public along the boardwalk and unimpeded emergency access to the boardwalk. Because the boardwalk is highly congested, Corporal Wawrzeniak indicated that each performer's ability to manage his or her own crowd is "paramount."

B. The Ordinances

At issue in this case are several ordinances enacted by Ocean City that impose regulations that apply to the boardwalk, *see* Code of the Town of Ocean City ("City Code"), ch. 62, art. I

(1999, Supp. No. 18, May 16, 2011) (available at http://oceancitymd.gov/City_Clerk/City_Code/), and its registration requirements for “unlicensed solicitors.” *See id.* §§ 62-1, 62-3, 6-7.⁴

In brief, the regulations applicable to the boardwalk fall into three categories. First, there is a categorical limitation on commercial activity that applies to the entire boardwalk, as well as public streets within 75 feet of the boardwalk and certain additional areas. *See id.* § 62-4. Second, an ordinance limits the locations on the boardwalk where a person can engage in “peddling, soliciting, hawking or street performing.” *Id.* § 62-5(b)(1) (as amended by Ordinance 2011-23, adopted June 20, 2011). Third, there are restrictions as to the manner in which a person may engage in “peddling, soliciting, hawking or street performing.” *See id.* § 62-5(b)(2)-(12). I shall review each of these categories in more detail.

1. Limitation on Commercial Activity

The categorical limitation on commercial activity throughout the boardwalk is set forth in City Code, § 62-4. With exceptions not relevant here, it provides:

Sec. 62-4. — Limitations on commerce on the boardwalk and immediately adjoining public areas.

It shall be unlawful for any person upon the boardwalk or upon its benches, ramps, stairs and other fixtures or upon the Caroline Street pad, or other

⁴ In his Complaint and in his Motion, plaintiff also challenged Ocean City’s general business licensing scheme, codified in Chapter 14, Article II, of the City Code. However, the City represented in its opposition to plaintiff’s Motion that plaintiff is subject only to the “unlicensed solicitor” registration scheme, and not the business licensing provisions of Chapter 14. *See Opp.* at 2-3. Plaintiff has not subsequently contested the City’s assertion that he is not subject to the general licensing provisions. Moreover, no evidence or argument regarding Chapter 14 was presented at the hearing. Accordingly, I consider plaintiff’s request for a preliminary injunction as to Chapter 14 to be waived, without prejudice to his request for final relief on the merits as to those code provisions. Nevertheless, I will discuss the requirements of Chapter 14, *infra*, for context.

street-end pads adjoining the boardwalk, or upon any other publicly owned surface or street situated within 75 feet of the edge of the boardwalk, or upon [two specified city blocks] to engage in the public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services.^[5]

2. *Limitation on Location of Peddling, Soliciting, Hawking, and Street Performing*

The limitation on the locations in which a person may engage in peddling, soliciting, hawking, or street performing is found in City Code, § 62-5(b)(1), as part of a larger list captioned “Prohibited acts on the boardwalk.” It states:

Sec. 62-5. — Prohibited acts on the boardwalk.

* * *

(b) It shall be unlawful for any person engaging in the permitted activity of peddling, soliciting, hawking or street performing^[6] on the boardwalk to:

- (1) Exercise or perform such activity or display in any area of the boardwalk other than within the area encompassed in the extended boundaries of the street ends[, except for the area encompassed within the extended boundaries from the south side of the boardwalk ramp on the south side of N. Division Street to the north side of the boardwalk ramp on the north side of N. Division Street, where such activity is also prohibited].

Id. (brackets indicate language added by Ordinance 2011-23, adopted June 20, 2011).

Although the ordinance does not define the phrase “extended boundaries of the street ends,” the parties have agreed on its meaning. As Corporal Wawrzeniak explained at the hearing, many of the City’s east-west streets terminate or “end” at the western edge of the

⁵ Another section of the City Code, § 62-2, entitled “[l]imitations on commerce on the boardwalk,” provides a more limited restriction, stating that it is “unlawful for any person, upon the boardwalk or upon its benches, stairs and other fixtures, to engage in the public sale, rental or exchange for donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services.” Section 62-4 seemingly applies everywhere that § 62-2 applies, making § 62-2 redundant and entirely subsumed within the prohibition contained in § 62-4.

⁶ The City Code does not contain definitions of the terms “hawking,” “soliciting,” “peddling,” or “street performing.”

boardwalk. The “area encompassed in the extended boundary” of a given “street end” refers to the portion of the boardwalk at the boardwalk’s intersection with an east-west street. It is 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.

Section 62-5(a) of the Code articulates the basis for § 62-5(b)(1)’s limitation on the location where peddling, soliciting, hawking or street performing can occur. It provides that the “Mayor and City Council . . . determined that the boardwalk is a major tourist attraction with congregations of pedestrians and the boardwalk tram necessitating the regulation of the location” of peddling, hawking, soliciting, and street performing “for public safety purposes.” City Code, § 62-5(a). Further, the Mayor and City Council “determined that the best interest of the public health, safety and general welfare is best served by limiting such activities to the area within the extended boundaries of street ends.” *Id.*

As indicated, the bracketed text in the above quotation from City Code, § 62-5(b)(1) was added by a recent amendment to the Code. Ocean City Ordinance 2011-23, which excluded the area encompassed by the extended boundaries of North Division Street from the street end areas where peddling, hawking, soliciting, and street performing are allowed, was enacted on June 20, 2011, a few days before this lawsuit was filed. At the preliminary injunction hearing, both Mayor Meehan and Fire Chief Larmore testified that the North Division Street restriction was enacted for public safety reasons, to ensure emergency access to the boardwalk for the Fire Department’s vehicles and equipment, including fire trucks and ambulances.⁷

⁷ Chief Larmore also submitted an affidavit to similar effect. *See* Ex.2 to Opp. (“Larmore Aff.”) (ECF 5-2).

North Division Street is the terminus of US Route 50, also known as Ocean Gateway, which is the main thoroughfare into Ocean City. Chief Larmore, who has been a member of the Ocean City Fire Department for twenty years, claimed that North Division Street has been the Department's primary emergency access route to the boardwalk for as long as he can remember. *See* Larmore Aff. ¶¶ 4-12. He explained that the end of North Division Street is the widest of any of the street ends abutting the boardwalk, and is almost twice as wide as any other street end. Moreover, unlike many of the other street ends, it is not obstructed by features such as wooden benches. According to Chief Larmore, it is the only street end that can accommodate the Fire Department's largest vehicles, and is the primary and most efficient means of ingress and egress to the boardwalk and beach for first responders to any fire or medical emergency occurring south of North Division Street.

Chief Larmore recalled that, in the past ten years, there have been four significant fires in structures on or near the boardwalk south of North Division Street, two north of North Division Street, and countless medical emergencies, all of which have required the Department to access the boardwalk via North Division Street. In his affidavit, Larmore averred that he is personally aware of incidents in which emergency personnel's ingress and egress to the boardwalk at North Division Street has been hindered due to the presence of street performers on or around the ramps leading onto the boardwalk at the end of North Division Street. *See* Larmore Aff. ¶ 13. In Chief Larmore's view, the difficulty with street performers in that location is not the performers themselves, but the crowds they draw, because it is more difficult to disperse a gathered, stationary crowd than to clear a path through a moving crowd.

According to Chief Larmore, at a meeting of Ocean City's department heads in June 2011, the City Manager indicated that an issue regarding street performers would be brought before the City Council at an upcoming council meeting, and asked department heads with concerns or questions regarding the issue of street performers on the boardwalk to attend the meeting. Larmore testified that, at the council meeting, he advocated strenuously for restricting street performers from the boardwalk at the end of North Division Street, claiming that he would be willing to "give up" access to all of the other street ends in exchange for North Division Street. As Chief Larmore sees it, unrestricted access to the boardwalk via North Division Street is critical for public safety.

3. *Restrictions on the Manner of Peddling, Soliciting, Hawking, and Street Performing*

Restrictions on the manner in which a person may engage in peddling, soliciting, hawking, or street performing occupy the remainder of § 62-5(b) of the City Code:

Sec. 62-5. — Prohibited acts on the boardwalk.

* * *

(b) It shall be unlawful for any person engaging in the permitted activity of peddling, soliciting, hawking or street performing on the boardwalk to:

* * *

- (2) Use anything other than portable tables or chairs for display purposes.
- (3) Set up any display on or within ten feet of tables, adjacent property entrance or exit, or boardwalk tram lane.
- (4) Obstruct or block pedestrian or vehicular traffic, the entrance to ramps and stairways to the beach, the entrance to comfort stations, the concrete pads on the east side of the boardwalk, public telephones, or trash receptacles.

* * *

- (6) Violate the town's noise ordinances, after being warned by a police officer.
- (7) Connect to any municipal electric outlet or private electric outlet without the permission of the owner.

- (8) Use nudity, pornographic materials, or obscenity in any display or performance.
- (9) Conduct sales or exchanges as prohibited by section 62-4 hereof.
- (10) Set a price or fee or accept same for observing or participating in a display or performance, other than being a tip the amount of which is not solicited.
- (11) Handout or distribute any advertising or promotional material which promote an activity, product or service other than that which the peddler, solicitor, hawker or street performer is engaged in as an integral part of the display or performance.
- (12) Use animals, other than for legitimate ADA purposes, fire or other hazardous materials in a display or performance.

Some of the provisions of § 62-5(b) are difficult to reconcile with each other, especially as they relate to peddling and hawking. Notably, “peddling,” “hawking,” “soliciting,” and “street performing” are not defined terms in the ordinance. The common meaning of peddling and hawking involves selling goods or services in public, often by means of loud advertising. *See, e.g.*, BLACK’S LAW DICTIONARY 786 (9th ed. 2009, Bryan A. Garner ed.) (defining hawking or peddling as the “act of offering, by outcry, goods for sale from door to door or on a public street”). Soliciting may also involve sales. *See id.* at 1520 (defining a “solicitor” as a “person who seeks business or contributions from others; an advertiser or promoter”). It is difficult to conceive how one can hawk or peddle, which § 62-5(b) indicates is a “permitted activity,” without violating § 62-5(b)(9), which bans sales or exchanges, or § 62-5(b)(10), which bans the establishment of prices or fees and the receipt of compensation (other than tips in unsolicited amounts).

Mayor Meehan testified that Ocean City enacted § 62-5(b)(10) because the Mayor and City Council understood such a restriction to be the “standard practice” in other jurisdictions. He also indicated that the provision “discourages soliciting or hawking,” and later suggested that,

because a price cannot be set under the ordinance, the solicitor or hawker must “have great faith in those that are purchasing” to pay fair prices (i.e., unsolicited tips).

4. Licensing and Registration Provisions

In addition to the foregoing regulations, Ocean City imposes city-wide, general business licensing requirements, as well as requirements for registration of “unlicensed solicitors.” Ocean City’s general business licensing scheme is set forth in Chapter 14, Article II, of the City Code. Section 14-32 provides:

Sec. 14-32. — License required.

No person shall engage in or carry on . . . in Ocean City, Maryland, any business, occupation or activity mentioned in [City Code, ch. 14, art. II] . . . without first having obtained from the Mayor and City Council of Ocean City a license for such business, occupation or activity.

Licenses must be renewed annually, upon payment of fees that are periodically established by resolution of the Mayor and City Council. *See* City Code, § 14-34(a)-(b). The general licensing ordinance also states that the “right is reserved to the Mayor and City Council to refuse to grant any license and to revoke any license previously granted which is determined by the Mayor and City Council to adversely affect the health, safety, morals and general welfare of the public.” *Id.* § 14-36.

Chapter 62 of the City Code, which imposes regulations applicable to the boardwalk, as set forth above, also contains requirements relevant to business licensure. Section 62-1 provides:

Sec. 62-1. — License required.

Except as herein provided, no persons shall engage in or carry on in Ocean City, Maryland, the business, occupation or activity of solicitor, distributor, peddler or hawker of any merchandise or commodity upon the streets or sidewalks of Ocean City, without first having obtained a license for such business,

occupation or activity as provided for in chapter 14, article II, Licensed Occupations.

Additionally, § 62-7(a) of the City Code states that the “provisions of chapter 14, article II of the Code of Ocean City, being general licensing provisions relating to business and trades, shall be applicable to all licenses under this article the same as if specifically set forth herein.” Moreover, § 62-7(a) provides: “It shall be unlawful for any person, *licensed or unlicensed*, to hawk, peddle or solicit on any city street or public way, boardwalk, beach or any parking lot unless specifically exempted or excepted by chapter 14, article II or this chapter.” *Id.* § 62-7(a) (emphasis added). It is a misdemeanor, subject to up to thirty days’ imprisonment or a fine of up to \$1,000, or both, to violate City Code § 62-7(a). *See id.* § 62-7(b).

Section 14-34(b) of the City Code specifies dozens of businesses, occupations, or activities that are subject to the licensing requirement, including, as relevant here, “[a]rt dealer and gallery,” *id.* § 14-34(b)(2),⁸ and “[h]awkers and peddlers, if permitted.” *Id.* § 14-34(b)(35). Yet, § 14-34(b)(35) also states: “No licenses will be issued for hawking and peddling on any Ocean City street or public way, boardwalk, beach or any parking lot.” Section 14-34(b) also contains a catch-all provision, which requires licensure of “[a]ny other business not herein classified or enumerated and not prohibited herein or by other provisions of this Code and approved by the Mayor and City Council.” *Id.* § 14-34(b)(70).

As noted, Ocean City asserts that plaintiff is not subject to the business licensing requirements outlined above. *See Opp.* at 2-3. But, it maintains that Chase is subject to the registration requirement for “unlicensed solicitors,” found in City Code, § 62-3, which states:

⁸ The licensing requirement for an art dealer or gallery only authorizes sales in a building (or on a covered porch connected to a building). *See City Code*, § 14-34(b)(2).

Sec. 62-3. — Registration of persons exempt from license requirement.

- (a) (1) The City Clerk shall, upon the making of the required oath and upon payment of the administrative fee, established by the Mayor and City Council, allow such person to register as an unlicensed solicitor and shall issue an identification tag or card to such person.^[9] The Clerk may waive the making of the oath and/or the administrative fee upon request supported by a valid reason.^[10] No person shall carry on such activity without first having obtained the permit required hereunder.

Although the City Code does not prescribe the amount of the registration fee, Ocean City states that the administrative fee for an “unlicensed solicitor” registration is currently seven dollars, which Mayor Meehan characterized as a “minimal cost” that merely “covers the administrative cost of issuing the permit.” According to Mayor Meehan, registration is valid for one year.

It is not clear from the City Code precisely who is “exempt from [the] license requirement,” and thus subject to the requirement to register as an unlicensed solicitor.¹¹ As noted, the City Code does not define the term “solicitor,” and Chapter 14 of the Code, which

⁹ It is not clear to whom “such person” refers, other than the “persons exempt from license requirement” mentioned in the caption of § 62-3. Although the “caption of a statute . . . ‘cannot undo or limit that which the [statute’s] text makes plain,’” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 256 (2004) (citation omitted), the plain text of § 62-3 is not comprehensible without reference to its caption.

¹⁰ I am not aware of any code provision that specifies the amount of the fee, the content of the oath, or what qualifies as a “valid reason” for waiver of the oath or fee requirement.

¹¹ A statutory restriction on speech may be unconstitutional because of impermissible vagueness regarding what persons or conduct are subject to the statute. *See, e.g., United States v. Williams*, 553 U.S. 285, 304 (2008) (stating that a statute is void for vagueness if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement”). Although the void-for-vagueness doctrine is “an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment,” it has broader application “in the First Amendment context,” where its requirements are “relaxed.” *Id.* Chase has not challenged Ocean City’s ordinances on vagueness grounds, however, and so I need not consider the void-for-vagueness doctrine here.

regulates business licensing, contains a catch-all provision requiring all businesses to obtain a license. *See* City Code, § 14-34(b)(70). At the hearing, the witnesses discussed the “unlicensed solicitor” registration requirement only in the context of street performers, and the parties agree that § 62-3 applies to street performers. Other provisions of the City Code, not cited by either party, indicate that the “unlicensed solicitor” registration requirement is not limited to street performers.

Ocean City’s Panhandling Ordinance, codified in Chapter 62, Article II of the City Code, generally bans “panhandling.” Section 62-33 states: “It shall be unlawful for any person to panhandle by accosting another or forcing oneself upon the company of another within the corporate limits of Ocean City.” Panhandling is defined in § 62-32 as follows:

Any type of begging or accosting of others for money, services, food or any other objects; solicitation of money, services, food or any other objects for which any service or object is offered in return, if the solicitor is not licensed by or registered with Ocean City and said license or registration identification tag is not publicly displayed at the time of said solicitation; the harassment of citizens by persons attempting to entice or procure service, money, food or any other objects by the use of promises, threats, fraud or artifice; or any peddling, soliciting, distributing or hawking in violation of the provisions of section 62-4.

(Emphasis added).

But, § 62-34 of the City Code establishes an exception to the prohibition on panhandling:

Sec. 62-34. — Exceptions.

The provisions of this article shall not apply to any person soliciting funds or contributions in pursuit of a religious or political activity, or for the purpose of supporting communications on religious, political or philosophical issues, and not for private profit or other purely commercial purpose, *provided that said person complies with the oath, registration and other requirements for unlicensed soliciting as provided for in sections 62-2 and 62-3, and further provided that said persons solicit funds or contributions only in areas designated for unlicensed soliciting by the provisions of section 62-4.* (Emphasis added.)

Thus, in addition to street performers such as plaintiff, it appears that the requirement to register as an “unlicensed solicitor” also applies, at a minimum, to persons who solicit “funds or contributions in pursuit of a religious or political activity, or for the purpose of supporting communications on religious, political or philosophical issues, and not for private profit or other purely commercial purpose.” *Id.* On the other hand, it is also apparent that § 62-3 does not apply to “peddlers” or “hawkers,” because § 14-34(b)(35) of the City Code requires hawkers and peddlers to obtain a business license, and therefore hawkers and peddlers are not “exempt from [the] license requirement,” as mentioned in the caption of § 62-3.

According to Corporal Wawrzeniak and Mayor Meehan, the reason for the registration requirement is to ensure that City officials can identify who is performing on the boardwalk. Corporal Wawrzeniak indicated that, several years ago, an accusation was raised that a fully costumed performer had inappropriately touched a child. Both Corporal Wawrzeniak and Mayor Meehan testified that the registration requirement enables officials to ascertain the identities of costumed performers, in the event that a street performer is accused of improper conduct, and can also provide such performers with protection from false accusations.

Mayor Meehan testified that 550 registrations under City Code, § 62-3 were issued in 2010, and 396 registrations have been issued to date in 2011. The mayor did not make clear whether these figures represented only the street performers who registered, or the total number of registered “unlicensed solicitors.”

C. Plaintiff's Performance and Paintings

Plaintiff is self-taught as a painter. Chase testified that he uses no brushes in his painting, relying entirely upon “paint manipulation” to achieve his desired effects. As he explained, he

puts his “heart and soul into every painting,” and often incorporates into his paintings imagery representing the number three, which to him symbolizes the Christian Holy Trinity of Father, Son, and Holy Spirit. One of Chase’s paintings was placed into evidence at the hearing. Chase plays music during his painting for inspiration, and to set a “tempo” for his work.

Chase has performed and created paintings on the Ocean City boardwalk since June 2010. According to Corporal Wawrzeniak, Chase is the only spray paint artist regularly working on the boardwalk. Because Chase’s spray paints dry quickly, most of his paintings are completed in fifteen minutes or less, and his audience is able to watch his work develop from start to finish. *See* Ex.A to Motion, ¶ 4 (“Chase Aff.”) (ECF 2-1). Chase markets and sells his paintings under the trade name “Stellar Paintings.” *Id.* ¶ 3. At the hearing, plaintiff’s counsel informed the Court that plaintiff has not registered as an unlicensed solicitor under § 62-3 of the City Code.

Plaintiff sets up his performance area “with an assortment of spray paints, indoor/outdoor carpets to protect the ground, a small ultra quiet portable generator, two heavy duty extension cords that plug into a surge protector, three work lights and various other painting supplies that are stored in plastic totes when not in use.” *Id.* ¶ 8. Chase elevates his canvas a few feet from the ground, and generally paints on his knees. He sets up bright lights when he paints at night, which help him accurately see the colors of the paint as he works, and also make him more visible to passing pedestrians, so as to attract an audience.

According to Chase, his performance area occupies approximately an eight-by-twelve-foot footprint; he always sets up at least thirty feet from the path of the tram; and he makes sure his audience does not encroach on the tram. Chase’s audiences vary in size, but because Chase

paints low to the ground, the crowd is ordinarily no more than two to three people deep—beyond that distance, it would be difficult to see Chase in action. He also establishes a barrier to keep the audience three or four feet from his workspace. In addition, because he uses aerosol paint, and paints in close proximity to his canvas for hours at a time, Chase wears a partial face mask while he paints, in order to avoid inhaling paint fumes (which Chase believes could cause “brain damage”). Corporal Wawrzeniak testified that, in his experience, only one or two other frequent street performers have a larger footprint than Chase.

Plaintiff’s income derives from sales of his paintings. Although Chase has established a standard price of \$40 per painting, he is willing to accept lower prices on occasion. Chase used to advertise the \$40 price of his paintings with a printed sign, but stopped doing so after an incident on May 7, 2011, when Ocean City police officers told him that, under City ordinances, he must remove the sign, and that he may not orally inform audience members of the price of his paintings. Chase Aff. ¶¶ 12-14.

Chase also employs an assistant, who is compensated with the tips that Chase receives from the audience. The tips are deposited into two large buckets placed near Chase’s performance space. The assistant, who is also learning the craft of artistic spray painting from Chase, talks to the crowd, answers their questions, and conducts sales while Chase paints.

Until the recent enactment of Ordinance 2011-23, discussed *supra*, Chase ordinarily set up his performance area on the boardwalk at the end of North Division Street. Following the enactment of Ordinance 2011-23, however, Chase was told by Ocean City police officers that he may not set up his performance area at the end of North Division Street. In his affidavit, Chase also recounts an incident in which he was instructed not to perform in an area “across from the

Ripley's Believe It or Not Museum near the terminus of Wicomico Street.” Chase Aff. ¶ 17.

At the hearing, Chase testified that, since these events, he has generally performed in the street end of Caroline Street, which is one block south of North Division Street. According to Chase, magicians used to perform at Caroline Street, but there is a “Dance Dance Revolution” video game machine that plays loud music near the location. The City had set up several benches in the street end in an amphitheatre-like formation when magicians were performing there, but the magicians ultimately found the area unsuitable for their performances, because they could not easily be heard above the music from the video game machine. Chase, who had been performing at other locations on the boardwalk since the enactment of Ordinance 2011-23, agreed to trade places with the magicians.¹² He does not mind the video game machine, because its music is similar to the music he plays to accompany his painting.

However, Chase testified that, for other reasons, the Caroline Street street end is not optimal for his performances. Since he began performing at Caroline Street, the City reconfigured the benches from their previous amphitheatre configuration, and bolted them in place. Chase explained that the benches are now configured in such a way that the view of Chase's performance area is obstructed from the boardwalk.¹³ Thus, it is difficult to “pull people off of the boardwalk” and attract a crowd during daylight hours. According to Chase, he is more

¹² Ocean City does not assign locations to street performers, and so the performance locations are effectively available on a “first come, first served” basis. However, both Chase and Mayor Meehan testified that street performers make informal arrangements among themselves for performance locations, such as the “trade” described above.

¹³ Mayor Meehan testified that the benches were reconfigured and bolted in place in order to ensure that patrons of an ice cream shop at the end of Caroline Street could sit on the benches to eat their ice cream. According to Mayor Meehan, people have sat and eaten ice cream on the benches for as long as he can remember, and the amphitheatre configuration was interfering with the benches' availability for use by patrons of the ice cream shop.

successful at night, when his lights advertise his presence. (There are more people on the boardwalk at night, but there are still significant crowds in the afternoon.) Chase would prefer to perform from noon to midnight, and did so when he performed at North Division Street, but he claimed that it is not feasible to perform during the daytime at Caroline Street because of the difficulty attracting an audience. Moreover, the Caroline Street end is situated between an ice cream shop and another food vendor, and Chase testified that there are often significant amounts of trash in the street end, which can sometimes be carried by the wind and blown into a painting in progress, which obviously ruins it. Chase did not explain why, given his concerns about Caroline Street, he has not moved to another street end.

Additional facts will be included in the discussion.

Discussion

Plaintiff's challenge to Ocean City's statutory scheme arises under the guarantees of freedom of speech contained in the First Amendment to the United States Constitution and its State-law counterpart, Article 40 of Maryland's Declaration of Rights.¹⁴ "The threshold question

¹⁴ The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article 40 of the Maryland Declaration of Rights provides: "That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

The Maryland Court of Appeals has held that courts ordinarily "need not consider Article 40 and the First Amendment separately as Article 40 is read generally *in pari materia* with the First Amendment." *Nefedro v. Montgomery County*, 414 Md. 585, 593 n.5, 996 A.2d 850, 855 n.5 (2010). Plaintiff does not assert that the protection under Article 40 exceeds that of the First Amendment. See Mem. in Support of Mot. for Prelim. Inj. at 7 n.4 (ECF 2-4). Accordingly, I will consider the parties' claims in the context of well-established First Amendment case law.

in any First Amendment challenge, of course, is whether any protected First Amendment right is involved.” *Willis v. Town of Marshall*, 426 F.3d 251 (4th Cir. 2005). Notably, “[i]t goes without saying that artistic expression lies within . . . First Amendment protection.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 602 (1998). Plaintiff’s public performance of painting, and his paintings themselves, are clearly protected speech under the First Amendment, and Ocean City does not argue otherwise. *See, e.g., Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569 (1995) (remarking that even the abstract paintings of Jackson Pollock are “unquestionably shielded” by the First Amendment); *IOTA XI Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 389 (4th Cir. 1993) (“First Amendment principles governing live entertainment are relatively clear: short of obscenity, it is generally protected.”).

Moreover, the fact that plaintiff sells his paintings, or receives compensation for performing, does not remove his artistic expression from the ambit of the First Amendment. The “degree of First Amendment protection is not diminished merely because the . . . speech is sold rather than given away.” *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 756 n.5 (1988); *see also Riley v. Nat’l Fed’n of the Blind*, 487 U.S. 781, 801 (1988) (“It is well settled that a speaker’s rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak.”).

For the purpose of analyzing restrictions of speech on public property, the Supreme Court has divided such property into various categories: the traditional public forum, the designated public forum, the limited public forum, and the non-public forum. *See Christian Legal Society v. Martinez*, ___ U.S. ___, 130 S. Ct. 2971, 2984 n.11 (2010); *Perry Ed. Ass’n v. Perry Local*

Educators' Ass'n, 460 U.S. 37, 46 (1983). Public streets and parks are the “archetype of a traditional public forum.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988). Indeed, they occupy a “special position in terms of First Amendment protection,” because “[t]ime out of mind’ public streets and sidewalks have been used for public assembly and debate.” *Snyder v. Phelps*, ___ U.S. ___, 131 S. Ct. 1207, 1218 (2011) (citations and some internal quotation marks omitted). Notably, “[i]n the traditional public forum, which includes the streets, sidewalks, parks, and general meeting halls, speakers’ rights are at their apex.” *Steinburg v. Chesterfield County Planning Comm’n*, 527 F.3d 377, 384 (4th Cir. 2008).

Chase contends, and Ocean City does not dispute, that the Ocean City boardwalk is a traditional public forum. See Mem. at 9-10; Opp. at 11.¹⁵ Chase’s position is consistent with several appellate decisions that have determined that a boardwalk or similar area is a traditional public forum. See, e.g., *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365, 1368-69 (9th Cir. 1997) (holding that the Venice Beach Boardwalk is a traditional public forum), *cert. denied*, 523 U.S. 1047 (1998); *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1100-06 (2003) (holding that the “Fremont Street Experience,” a publicly-owned commercial and entertainment pedestrian district in downtown Las Vegas, is a traditional public forum), *cert. denied*, 540 U.S. 1110 (2004); *Warren v. Fairfax County*, 196 F.3d 186, 189-90 (4th Cir. 1999) (holding that the “Center Island mall” in front of the Fairfax County Government Center Complex is a traditional public forum); *Gaudiya Vaishnava Soc’y v. City of San Francisco*, 952 F.2d 1059, 1061-65 (9th

¹⁵ In a previous, unreported decision in this district considering a First Amendment challenge to earlier Ocean City ordinances restricting activity on the boardwalk, Judge Marvin J. Garbis rejected Ocean City’s argument that the boardwalk is not a public street for First Amendment purposes. See *One World One Family Now, Inc. v. Mayor of Ocean City*, Civ. No. MJG-95-1401, op. at 9-11 (D. Md. June 22, 1995).

Cir. 1990) (holding that San Francisco's Fisherman's Wharf is a traditional public forum), *cert. denied*, 504 U.S. 914 (1992).¹⁶ Accordingly, I am readily satisfied that the boardwalk constitutes a traditional public forum.

In a traditional public forum, “any restriction based on the content . . . of speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest.” *Christian Legal Society, supra*, 130 S. Ct. at 2984 n.11 (quoting *Pleasant Grove City v. Summum*, ___ U.S. ___, 129 S. Ct. 1125, 1132 (2009)) (alteration in original). However, even in a traditional public forum, the government may impose reasonable “time, place, and manner” restrictions on speech, provided that the restrictions satisfy an intermediate level of scrutiny (rather than the uncompromising threshold of strict scrutiny). In order to pass intermediate scrutiny, a “time, place, and manner” restriction on speech must (1) be “justified without reference to the content of the regulated speech”; (2) be “narrowly tailored to serve a significant governmental interest”; and (3) “leave open ample alternative channels for communication of the information” that the speaker wishes to communicate. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *see also Pleasant Grove*, 129 S. Ct. at 1132; *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Although “a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government’s legitimate, content-neutral interests,” and the

¹⁶ Some decisions have held that certain publicly-owned tourist areas are not traditional public fora. *See, e.g., New England Regional Council of Carpenters v. Kinton*, 284 F.3d 9, 22-23 (1st Cir. 2002) (holding that Boston’s Fish Pier is not a traditional public forum); *Chicago ACORN v. Metropolitan Pier & Exposition Auth.*, 150 F.3d 695, 702 (7th Cir. 1998) (holding that Chicago’s Navy Pier is not a traditional public forum). However, the tourist areas in those cases had attributes not shared by Ocean City’s boardwalk. For instance, historically they had not been public streets, and were not avenues of pedestrian travel.

regulation may not “burden substantially more speech than is necessary to further the government’s legitimate interests,” it “need not be the least restrictive or least intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied ‘so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.’” *Rock Against Racism*, 491 U.S. at 799 (internal citations and footnote omitted). In other words, “So long as the means chosen are not substantially broader than necessary to achieve the government’s interest, . . . the regulation will not be invalid simply because a court concludes that the government’s interest could be adequately served by some less-speech-restrictive alternative.” *Id.* at 800.

These principles frame the analysis of plaintiff’s motion for a preliminary injunction.

“In order to receive a preliminary injunction, a plaintiff ‘must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.’” *WV Ass’n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (quoting *Winter v. Natural Res. Defense Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 374 (2008)); *see also Dewhurst v. Century Aluminum Co.*, ___ F.3d ___, No. 10-1759, slip op. at 4 (4th Cir. Aug. 22, 2011) (same). “[I]n the context of an alleged violation of First Amendment rights, a plaintiff’s claimed irreparable harm is ‘inseparably linked’ to the likelihood of success on the merits of plaintiff’s First Amendment claim.” *Musgrave*, 553 F.3d at 298 (citation omitted). As the Fourth Circuit said in *Legend Night Club v. Miller*, 637 F.3d 291 (2011), albeit in the context of permanent injunctive relief, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.*

at 302 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Ordinarily, such a threatened injury to plaintiff will “easily outweigh[] whatever burden the injunction may impose,” because the government “is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” *Id.* at 302-03.

Thus, for the purpose of plaintiff’s motion for preliminary injunction, I shall focus primarily on whether plaintiff can demonstrate a likelihood of success on the merits. As I explain below, because Ocean City’s ordinances impose restrictions on speech and/or expressive conduct, which are subject at least to intermediate scrutiny, the City bears the burden of persuasion as to this issue.

Plaintiff argues that the disputed Ocean City ordinances are content-based restrictions on speech, because they apply “only to certain kinds of speech: peddling, soliciting, hawking and street performing, each of which involves speech that seeks to engage in some commercial exchange or receipt from the public.” Mem. at 11. Therefore, plaintiff contends that the ordinances are subject to strict scrutiny. But, even if Ocean City’s ordinances are content-neutral “time, place, and manner” restrictions, subject only to intermediate scrutiny, plaintiff maintains that they cannot satisfy that level of scrutiny.

Ocean City counters that its ordinances regulate conduct, not the content of expression. *See Opp.* at 5. According to the City, its ordinances are reasonable “time, place, and manner” restrictions, which satisfy the intermediate scrutiny standard. *See Opp.* at 10.¹⁷

¹⁷ Ocean City also argues that the Court should apply a somewhat different intermediate scrutiny test, which pertains to statutes that apply where “‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct.” *United States v. O’Brien*, 391 U.S. 367, 376 (1968). Under the *O’Brien* test, a restriction on such expressive conduct satisfies the First Amendment (1) “if it is within the constitutional power of the Government;” (2) “if it furthers an important or

Assuming, *arguendo*, that Ocean City's ordinances are content-based, and therefore subject to strict scrutiny, the Supreme Court has expressly held that the burden is on the government at the preliminary injunction stage to demonstrate the constitutionality of such an ordinance. In *Ashcroft v. ACLU*, 542 U.S. 656, 665 (2004), reviewing a preliminary injunction against enforcement of the content-based Child Online Protection Act ("COPA"), the Court said: "When plaintiffs challenge a content-based speech restriction, the burden is on the Government to prove that the proposed alternatives will not be as effective as the challenged statute." The Court explained that the Government must carry the burden not only at the final merits stage, but also at the preliminary injunction stage, stating: "As the Government bears the burden of proof on the ultimate question of COPA's constitutionality, respondents must be deemed likely to prevail unless the Government has shown that respondents' proposed less restrictive alternatives are less effective than COPA." *Id.* at 666. In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006), the Court reiterated that "the burdens at the preliminary injunction stage track the burdens at trial."

In the alternative, assuming that the intermediate scrutiny standard applies, the burden of persuasion remains on the City. Although I am unaware of a case in which the Supreme Court or the Fourth Circuit has addressed the burden of persuasion at the preliminary injunction stage with respect to intermediate scrutiny under the First Amendment, appellate courts have

substantial governmental interest;" (3) "if the governmental interest is unrelated to the suppression of free expression;" and (4) "if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* at 377. Ocean City's distinction is essentially academic, however, because both *Clark*, *supra*, 468 U.S. 288, and *O'Brien* apply intermediate scrutiny. Indeed, as the Supreme Court explained in *Clark*, the *O'Brien* test "in the last analysis is little, if any, different from the standard applied to time, place, or manner restrictions." *Clark*, 468 U.S. at 298. *Accord Hoffman v. State of Maryland*, 928 F.2d 646, 648 (4th Cir. 1991) (equating *O'Brien* and *Clark* standards).

concluded that, in general, the government bears the burden to satisfy intermediate scrutiny. In *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 505 (1996), applying intermediate scrutiny to a restriction on commercial speech, the Supreme Court said that “the State bears the burden of showing ... that its regulation will advance its interest ... ‘to a material degree.’” Similarly, applying intermediate scrutiny to a time, place, and manner restriction on street performance, the First Circuit said in *Casey v. City of Newport*, 308 F.3d 106, 111 (1st Cir. 2002): “The burden of proof is on the City to demonstrate that its restrictions on speech are narrowly tailored.” Likewise, the Seventh Circuit has said that “‘the government has the burden of showing that there is evidence supporting its proffered justification’ for its speech restriction when asserting that the restriction survives the time, place, and manner analysis.” *Horina v. City of Granite City*, 538 F.3d 624, 633 (7th Cir. 2008) (citation omitted). *Cf. Johnson v. Whitehead*, 647 F.3d 120, 135 (4th Cir. 2011) (stating, in challenge to naturalization statute under equal protection clause of Fifth Amendment, that “‘intermediate scrutiny places the burden of establishing the required fit [of substantial relationship to an important government interest] squarely upon the government’”) (quoting *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (applying intermediate scrutiny in Second Amendment challenge)).

Based on the foregoing, I conclude that the burden of persuasion is on Ocean City. In effect, if the City cannot demonstrate that its ordinances satisfy the requisite level of scrutiny, plaintiff is likely to succeed on the merits.

Accordingly, I turn to consider each of the challenged ordinances.

A. Restriction on Location

As indicated, § 62-5(b)(1) of the City Code, as amended by Ordinance 2011-23, restricts the “permitted activities” of hawking, peddling, soliciting, and street performing on the boardwalk to the “area encompassed in the extended boundaries of the street ends,” but excluding the street end of North Division Street. In my view, this restriction is a reasonable time, place, and manner restriction that is subject to, and satisfies, intermediate scrutiny.

At the outset, I reject plaintiff’s contention that § 62-5(b)(1) is subject to strict scrutiny, as a content-based restriction on speech. As noted, plaintiff contends that the ordinance is content based because it applies only to “peddling, soliciting, hawking or street performing,” and not to other varieties of speech or expressive conduct. In support of this contention, plaintiff cites *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), in which the Supreme Court struck down a Cincinnati ordinance prohibiting the public distribution of “commercial handbills.” The plaintiffs in *Discovery Network* distributed free magazines consisting primarily of advertising material through various newsracks located throughout the city. *Id.* at 412-13. The city directed the plaintiffs to remove their newsracks, because their publications were prohibited as “commercial handbills” under an applicable city ordinance. *Id.* at 413. However, the ordinance did not prohibit the public distribution of newspapers, which were widely distributed via newsracks similar to those operated by the plaintiffs. *Id.* at 419-20. In other words, the ordinance banned “the use of newsracks that distribute ‘commercial handbills,’ but not ‘newspapers.’” *Id.* at 429. In holding the city’s ordinance unconstitutional, the Court said: “Under the city’s newsrack policy, whether any particular newsrack falls within the ban is

determined by the content of the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the ban in this case is ‘content based.’” *Id.*

Unlike the Cincinnati ordinance in *Discovery Network*, § 62-5(b)(1) does not differentiate between commercial and non-commercial speech. The location restriction applies to *all* peddling, hawking, soliciting, or street performing, regardless of what is being peddled or hawked; regardless of whether the solicitation is commercial or non-commercial in nature; and regardless of the ideas communicated. Put another way, the Ocean City ordinance is indifferent to the viewpoint of the speaker and to the subject matter of the speech or expressive conduct at issue. Thus, § 62-5(b)(1) does not implicate the core concern underlying strict scrutiny of content-based regulations, which is that government “‘may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.’” *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196 (2003) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)).

Notably, the Supreme Court has consistently said that a statute will be considered content neutral so long as it is “‘justified without reference to the content of the regulated speech.’” *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986) (citation omitted; emphasis in *Renton*). In other words, strict scrutiny is reserved for statutes that are “enacted for the purpose of restraining speech on the basis of its content.” *Id.* at 46-47. As the Court made clear in *Renton*, an ordinance that applies to a particular type of speech or expressive conduct (in that case, the screening of adult movies) will be considered content neutral so long as it is “aimed not at the *content*” of the speech, “but rather at the *secondary effects* . . . on the surrounding community” of the regulated type of speech. *Id.* at 47 (emphasis in original). *See also Boos v.*

Barry, 485 U.S. 312, 320-21 (1988) (subjecting to strict scrutiny a D.C. ordinance prohibiting display of signs critical of foreign nation's government within 500 feet of that nation's embassy, and explaining that "[l]isteners' reactions to speech are not the type of 'secondary effects' we referred to in *Renton*").

In *Discovery Network*, Cincinnati's sin was not simply that it differentiated between commercial and non-commercial speech.¹⁸ Rather, the ordinance was content-based, and therefore constitutionally suspect, "because the very basis for the regulation is the difference in content between ordinary newspapers and commercial speech." *Discovery Network*, 507 U.S. at 429. There were "no secondary effects attributable to [the plaintiffs'] newsracks that distinguish[ed] them from the newsracks Cincinnati permits to remain on its sidewalks." *Id.* at 430. It was "the absence of a neutral justification for its selective ban on newsracks that prevent[ed] the city from defending its newsrack policy as content neutral." *Id.*

In this case, there is no connection between Ocean City's justification for its restriction of locations on the boardwalk where a person may peddle, hawk, solicit, or perform and the content of the speech. Rather, as the City's witnesses credibly testified, the ordinance was enacted due to concerns for public safety and the management of the free flow of pedestrian traffic on the

¹⁸ Indeed, the Supreme Court has consistently held that the Constitution "accords less protection to commercial speech than to other constitutionally safeguarded forms of expression." *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 64-65 (1983). See, e.g., *Milavetz, Gallop & Milavetz, P.A. v. United States*, ___ U.S. ___, 130 S. Ct. 1324, 133 (2010) (subjecting regulation of commercial speech to intermediate scrutiny); *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469 (1989) (same); *Central Hudson Gas & Elec. Co. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 563 (1980) (same). Notably, expression is not "commercial speech" merely because the expression is sold. Rather, the Supreme Court has described "commercial speech" as speech that has *all* of the following attributes: (1) it consists of "advertisements"; (2) it refers "to a specific product"; and (3) the speaker "has an economic motivation" for the speech. *Bolger*, 463 U.S. at 67.

boardwalk. Ocean City's witnesses addressed the traffic and safety issues presented by stationary crowds that tend to gather around street performers, regardless of the content of any given street performance, and the importance of vehicular access to the boardwalk via North Division Street. As Corporal Wawrzeniak testified, for example, the boardwalk is often highly congested, and the free flow of traffic is a significant concern for public safety. With respect to the recently-enacted North Division Street restriction, Chief Larmore thoroughly explained that, for public safety reasons, the City sought to bar street performers from the street end of North Division Street so as not to obstruct the access of emergency vehicles to the boardwalk.

I conclude that § 62-5(b)(1), including its recent amendment by Ordinance 2011-23, is a content neutral restriction on the time, place, and manner of speech, and is justified by Ocean City's substantial interests in public safety and the free flow of pedestrian traffic. Moreover, on the record presently before the Court, § 62-5(b)(1) appears narrowly tailored to those interests. By limiting peddling, hawking, soliciting, and street performing to the parts of the boardwalk that are within the "extended boundaries of the street ends," the ordinance ensures that those activities occur at the boardwalk's intersections with other city streets, where congested traffic has sufficient room to maneuver around stationary crowds. Furthermore, the restriction on North Division Street applies only to a single street end, because that particular street end is the only one large enough to accommodate the City's emergency equipment in the event of a fire or medical incident on the beach or boardwalk.¹⁹

¹⁹ In Chase's affidavit, and at the hearing, Chase presented some evidence that could be seen as undercutting the City's asserted reasons for the North Division Street restriction. For example, he noted that the City allows "Radio Free Disney" to erect a semi-permanent stage for performances on the beach at the street end of North Division Street. However, at this juncture, Chase has not marshaled these inchoate facts into any showing that the City's stated interests in

In sum, the City has demonstrated that § 62-5(b)(1) “promotes a substantial government interest that would be achieved less effectively” without the ordinance, *Rock Against Racism*, *supra*, 491 U.S. at 782-83, while not burdening “substantially more speech than is necessary to further the government’s legitimate interests.” *Id.* at 799. That is all that is required under the narrow tailoring prong of intermediate scrutiny.

Finally, it is clear that § 62-5(b)(1) leaves ample alternative avenues for plaintiff’s expression. Plaintiff, along with other peddlers, solicitors, and street performers, is able to ply his craft at dozens of locations along the boardwalk, in any street end other than North Division Street. To be sure, plaintiff has articulated why he regards the end of Caroline Street as less optimal for his performances than the end of North Division Street. But, plaintiff’s dissatisfaction with Caroline Street—one block from North Division Street—does not establish that Caroline Street, or the dozens of other available street ends, are constitutionally inadequate alternative channels for his expression.

Indeed, under Ocean City’s ordinance, far more alternative forums for expression are available than was the case in *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981). In *Heffron*, the Supreme Court held that a Minnesota State Fair regulation, which required all sales and solicitation at the fair to be conducted from booths “rented to all comers in a nondiscriminatory fashion on a first-come, first-served basis,” was a reasonable time, place, and manner restriction. *Id.* at 644. The Court stated that the booth rule was narrowly tailored to the state’s legitimate “need to maintain the orderly movement of the crowd given the

crowd control and public safety are pretextual or that the North Division Street restriction is not narrowly tailored to those interests. At this stage of the litigation, on the basis of the evidentiary presentation at the preliminary injunction hearing, I am satisfied that § 62-5(b)(1) comports with the narrow tailoring prong of the intermediate scrutiny test.

large number of exhibitors and persons attending the Fair.” *Id.* at 649-50. Moreover, because the fair made booths available for conducting solicitation and sales, the Court held that “alternative forums for the expression of respondents’ protected speech exist despite the effects of the Rule.” *Id.* at 654.²⁰

Therefore, based on the evidence presently before the Court, I am satisfied that § 62-5(b)(1) satisfies intermediate scrutiny, and is a reasonable restriction on the time, place, and manner of speech. Accordingly, I decline to preliminarily enjoin enforcement of § 62-5(b)(1).

It is also clear that several other provisions of § 62-5(b) are constitutional under an intermediate scrutiny analysis. Indeed, plaintiff has not presented any argument for the unconstitutionality of several of § 62-5(b)’s subsections. The following provisions of § 62-5(b) are plainly content neutral and narrowly tailored to the City’s interests in public safety or other substantial interests that are obvious on the face of the ordinance, and will not be enjoined:

It shall be unlawful for any person engaging in the permitted activity of peddling, soliciting, hawking or street performing on the boardwalk to:

* * *

(3) Set up any display on or within ten feet of tables, adjacent property entrance or exit, or boardwalk tram lane.

(4) Obstruct or block pedestrian or vehicular traffic, the entrance to ramps and stairways to the beach, the entrance to comfort stations, the concrete pads on the east side of the boardwalk, public telephones, or trash receptacles.

* * *

(6) Violate the town’s noise ordinances, after being warned by a police officer.

(7) Connect to any municipal electric outlet or private electric outlet without the permission of the owner.

²⁰ Notably, *Heffron* expressly overruled a contrary Fourth Circuit decision, *Edwards v. Maryland State Fair & Agricultural Society, Inc.*, 628 F.2d 282 (4th Cir. 1980), cited by plaintiff, which invalidated a similar “booth rule” for the Maryland State Fair. *See Heffron*, 452 U.S. at 646 n.9 (listing *Edwards* among conflicting lower court cases supporting grant of certiorari).

* * *

(12) Use animals, other than for legitimate ADA purposes, fire or other hazardous materials in a display or performance.

Section 62-5(b)(8) prohibits the use of “nudity” and “pornographic materials” in any “display or performance.” Plaintiff has not mounted any argument or presented any evidence with respect to this provision.²¹ Nor has plaintiff suggested that he utilizes or seeks to utilize depictions of nudity or pornographic content in his own work.

Federal courts do not have “unconditioned authority to determine the constitutionality of legislative or executive acts,” without regard to the constitutional and prudential requirements of standing. *Arizona Christian Sch. Tuition Org. v. Winn*, ___ U.S. ___, 131 S. Ct. 1436, 1442 (2011); *see also Commonwealth of Virginia ex rel. Cuccinelli v. Sebelius*, ___ F.3d ___, No. 11-1057, slip op. at 20 (4th Cir. Sept. 8, 2011). In order to challenge Ocean City’s ordinances, plaintiff “must establish that he has standing to challenge each provision of an ordinance by showing that he was injured by application of those provisions.” *Covenant Media of SC, LLC v. City of North Charleston*, 493 F.3d 421, 430 (4th Cir. 2007) (rejecting First Amendment challenge to statutes that did not apply to plaintiffs); *see also FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-36 (1990) (same). An “interest shared generally with the public at large in the proper application of the Constitution and laws” is insufficient to confer standing. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). In the absence of standing, or any evidence or analysis, I will not enjoin § 62-5(b)(8).

²¹ Section 62-5(b)(8) also prohibits the use of “obscenity,” which is clearly constitutional because obscenity “enjoy[s] no First Amendment protection.” *United States v. Williams*, 553 U.S. 285, 298 (2008).

Similarly, I will not enjoin § 62-5(b)(11), which makes it unlawful to “[h]andout or distribute any advertising or promotional material which promote an activity, product or service other than that which the peddler, solicitor, hawker or street performer is engaged in as an integral part of the display or performance.” As an express regulation of advertising, this provision appears to be a restriction on commercial speech, subject to intermediate scrutiny. *See* note 18, *supra*. Although plaintiff’s counsel briefly commented on this provision in argument, the parties have not presented any evidence or detailed analysis regarding its operation or application. More important, plaintiff’s counsel expressly conceded that § 62-5(b)(11) “doesn’t affect Mr. Chase.” Accordingly, I decline to enjoin § 62-5(b)(11).

I also will not enjoin § 62-5(b)(2), which prohibits the use of “anything other than portable tables or chairs for display purposes.” Although plaintiff’s counsel suggested in argument that this provision could impinge upon free expression by prohibiting the use of “props,” that interpretation is by no means clear on the face of the ordinance. Nor was any evidence was offered regarding the enforcement of this provision, its application to plaintiff, or the governmental interests it serves. Without such evidence, there is no showing at this juncture that plaintiff, or anyone else, is likely to be harmed by its continued enforcement.

The City ordinances that prohibit “sales or exchanges,” § 62-5(b)(9), and establishment or acceptance of “a price or fee . . . for observing or participating in a display or performance, other than . . . a tip the amount of which is not solicited,” § 62-5(b)(10), along with the categorical ban on commercial activity, § 62-4, present thornier questions. I now turn to those provisions.

B. Restrictions on Commercial Expression and Activity

Section 62-5(b)(10), quoted above, plainly regulates speech. *See Berger v. City of Seattle*, 569 F.3d 1029, 1051 (9th Cir. 2009) (holding that a regulation forbidding street performers to “solicit donations,” except by “passively’ . . . ‘inform[ing] the public that such donations are sought” with written signs, constituted a restriction on speech because it “allows the conduct—exchange of money,” but “regulates only the speech by specifying the manner of requesting money—only . . . passively”) (quoting regulation; emphasis in original). However, I must consider the provision in the context of §§ 62-2, 62-4, and 62-5(b)(9), which essentially ban all commercial activity on the boardwalk.

Primarily at issue is § 62-4, which prohibits on the entire boardwalk, as well as several adjoining and nearby areas, the “public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services.” By its text, § 62-4 is not a restriction of speech. Rather, it is an economic regulation that prohibits the sale of any products or services in particular locations. Clearly, in the majority of its applications, the ordinance does not pose First Amendment issues. *See, e.g., United States v. Antzoulatos*, 962 F.2d 720, 726 (7th Cir.) (“Regulation of economic activity, such as Antzoulatos’ ability to sell cars, simply does not implicate the First Amendment.”), *cert. denied*, 506 U.S. 919 (1992). Moreover, the fact that the ordinance necessarily prohibits a vendor from making the types of communications that are inherent in any sale of a product (e.g., advertising, communicating a price, etc.) does not subject it to First Amendment scrutiny. The Supreme Court has said: “Any First Amendment interest which might be served by advertising an ordinary commercial proposal and which might arguably outweigh the governmental interest supporting the regulation is

altogether absent when the commercial activity itself is illegal and the restriction on advertising is incidental to a valid limitation on economic activity.” *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Relations*, 413 U.S. 376, 389 (1973).

However, courts have recognized that a restriction on sales in a traditional public forum can raise First Amendment concerns when applied to the sale of expressive material that is entitled to First Amendment protection. For instance, in *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996), *cert. denied*, 520 U.S. 1251 (1997), and *Mastrovincenzo v. City of New York*, 435 F.3d 78 (2d Cir. 2006), the Second Circuit considered First Amendment challenges to the enforcement of New York City’s General Vendors Law, which governs street vending, against artists selling their own “painting, photography and sculpture,” *Bery*, 97 F.3d at 691, and “freelance artists” selling “clothing painted with graffiti,” *Mastrovincenzo*, 435 F.3d at 82. Similarly, a series of cases in the Ninth Circuit addressed the constitutionality of restrictions on vending in traditional public fora, as applied to “nonprofit groups” selling “message-bearing . . . merchandise such as T-shirts, books, buttons, stuffed animals, jewelry and bumper stickers,” *Gaudiya Vaishnava Soc’y v. City of San Francisco*, 952 F.2d 1059, 1060 (9th Cir. 1990), *cert. denied*, 504 U.S. 914 (1992); the sale by non-profit organizations of “T-shirts imprinted with various philosophical messages,” *One World One Family Now v. City of Honolulu*, 76 F.3d 1009, 1011 (9th Cir.), *cert. denied*, 519 U.S. 1009 (1996); a street musician’s sale of his recorded music and sale by an “activist” of “literature, books, t-shirts, bumper stickers, buttons, and other articles bearing political slogans,” *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365, 1366-67 (9th Cir. 1997), *cert. denied*, 523 U.S. 1047 (1998); a “painter of nature scenes” selling his paintings, *White v. City of Sparks*, 500 F.3d 953, 954 (9th Cir. 2007), *cert. denied*, 553 U.S. 1005

(2008); and vendors of shea butter and incense, *see Hunt v. City of Los Angeles*, 638 F.3d 703,708 (9th Cir. 2011).²²

The cases cited above have come to different conclusions as to the constitutionality of the various statutes they considered, as applied to the particular vendors in each case. But, the courts generally shared a common methodology. Initially, they looked to whether the plaintiff's sale of the particular type of merchandise at issue constituted protected expression under the First Amendment. *Compare, e.g., White*, 500 F.3d at 956 (holding "that the First Amendment protects an artist's original paintings" and that plaintiff's "sale of his paintings" did not "remove[] them from the ambit of protected expression") *with Hunt*, 638 F.3d at 716-17 (holding that plaintiffs' sale of shea butter and incense was not "fully protected speech" because they "are selling items that have a predominantly utilitarian, not an expressive, purpose and do not incorporate artwork created by Plaintiffs").

This is not always an easy task, because there are "inherent line-drawing problems associated with distinguishing among artwork with presumptively expressive content (such as [paintings, photographs, prints, and sculptures]), merchandise with potentially expressive content (such as 'the crafts of the jeweler, the potter and the silversmith'), and merchandise with no expressive content." *Mastrovincenzo*, 435 F.3d at 85 (quoting and citing *Bery*, 97 F.3d at 696). Moreover, some objects are otherwise utilitarian, but can become "inextricably intertwined" with "pure elements of speech" when they are sold to disseminate political, religious, or philosophical messages, *Gaudiya*, 952 F.2d at 1064-65 (holding that religious and political groups' sale of

²² I am unaware of a Supreme Court case or a Fourth Circuit case that has discussed the specific issue of application of the First Amendment to a wholesale restriction on sales, including the sale of protected expression, in a traditional public forum.

merchandise and literature was fully protected); *see also One World*, 76 F.3d at 1011-12 (holding that nonprofit corporations' sales of "T-shirts imprinted with various philosophical messages" were "within the ambit of the First Amendment"), or when they "serve a predominantly expressive purpose." *Mastrovincenzo*, 435 F.3d at 97 (holding that artists' graffiti-painted clothing items "serve a predominantly expressive purpose and their sale is consequently protected under the First Amendment").

If a plaintiff's sale of merchandise constituted expression protected by the First Amendment, the courts then analyzed the particular commercial regulation in issue to determine whether it was content neutral, and, if so, whether it satisfied intermediate scrutiny. *See, e.g., Mastrovincenzo*, 435 F.3d at 98 (applying intermediate scrutiny); *One World*, 76 F.3d at 1012 (same); *Perry*, 121 F.3d at 1369-71 (same).

Here, as I have already discussed, plaintiff's sale of his own artistic paintings and his public performances of painting are expressive conduct. Although other artisans or performers might pose more difficult "line-drawing problems" for distinguishing primarily expressive conduct from the sale of predominantly utilitarian items, *Mastrovincenzo*, 435 F.3d at 85, Chase's art and performance clearly constitute fully protected expression, and his sale of his own paintings is also fully entitled to the protection of the First Amendment. The ordinance is obviously content neutral, however, in that it applies to all sales of any goods or services. *See One World*, 76 F.3d at 1012 ("The ordinance imposes a flat ban, one that is applied without regard to content. Accordingly, it is content-neutral."). Accordingly, I turn to the second stage of analysis, and consider whether § 62-4 of the City Code, as applied to plaintiff, satisfies intermediate scrutiny. As discussed, to satisfy intermediate scrutiny, the City must demonstrate

that the ordinance is narrowly tailored to serve a significant government interest, and leaves open an adequate alternative channel of communication. In my view, the City has failed to do so.

The City's attorney conceded at the preliminary injunction hearing that the prohibition on sales is "the weakest part of the entire ordinance." The only interest served by § 62-4 that the City identified was to "prohibit pure commerce on the boardwalk." That is not a statement of purpose so much as a description of the operation of the ordinance. In any event, if the purpose of § 62-4 is to render the boardwalk an area free of commercialism, it is not narrowly tailored to serve that interest; indeed, it is well known that Ocean City's boardwalk is host to a veritable bazaar of commercial activity from the shops and attractions that line it. Yet, § 62-4 prohibits commerce only by persons situated on the boardwalk itself, who do not sell their wares from "brick-and-mortar" establishments.

Although the City did not articulate other any other interests served by § 62-4, municipalities in other cases have cited additional interests supporting restrictions on commercial activity. For instance, in *One World*, the City of Honolulu articulated three "legitimate governmental interests" in support of an ordinance prohibiting the sale of merchandise on city streets: "(1) 'maintaining the aesthetic attractiveness of Waikiki,' (2) 'promoting public safety and the orderly movement of pedestrians,' and (3) 'protecting the local merchant economy.'" 76 F.3d at 1012. Even assuming that Ocean City had asserted these interests in support of § 62-4, no evidence was presented demonstrating that a total ban of the sale of merchandise on the boardwalk, including the sale of fully protected expression, is narrowly tailored to serve those interests.

As we have seen, Ocean City expressly permits peddling, hawking, soliciting, and street performing in designated locations on the boardwalk; the City has delineated those locations for the very purpose of promoting public safety and the free flow of traffic. Yet, in these areas, tips may be collected. Ocean City did not present any evidence explaining the rationale for allowing peddlers, hawkers, solicitors, or street performers to give away their work, without charge, or to collect tips, while barring the sale of expressive material in those same locations. Put another way, Ocean City has not submitted any evidence as to why sales would affect the aesthetics of the boardwalk, or create greater public safety concerns, than would otherwise result from the collection of tips or free performances. Nor has Ocean City introduced any evidence that § 62-4 is narrowly tailored to protect the City's local economy, such as the vendors who operate from stores along the boardwalk.

Finally, § 62-4 does not leave ample alternative avenues for plaintiff, and others similarly situated, to communicate their protected expression. To the contrary, it is a total prohibition that applies to the entire boardwalk, as well as to all City streets within 75 feet of the boardwalk. In *Heffron, supra*, the Supreme Court stressed that to satisfy intermediate scrutiny, a regulation of speech must provide alternative avenues for expression "within the forum in question." 452 U.S. at 655. The Court has long maintained that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Reno v. ACLU*, 521 U.S. 844, 880 (1997) (quoting *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939)).

For similar reasons, the First Circuit in *Bery, supra*, 97 F.3d at 697-98, held that New York City's General Vendors Law unconstitutionally restricted the First Amendment rights of

visual artists who sought to sell their paintings, photography, and sculpture on city streets. The *Bery* Court stated that, under intermediate scrutiny, New York City could not “bar an entire category of expression to accomplish [its] accepted objective [of keeping sidewalks free of congestion] when more narrowly drawn regulations will suffice.” *Id.* at 697.

Turning to § 62-5(b)(10), which bars street performers from requesting or accepting compensation other than unsolicited tips, this restriction plainly implicates speech, and fails intermediate scrutiny for reasons similar to those pertaining to § 62-4. At this juncture, the City has not articulated any legitimate government interest in support of this provision. Mayor Meehan merely expressed his belief that such a restriction is a “standard practice” in other jurisdictions. That alone is not a legitimate government interest sufficient to satisfy intermediate scrutiny.²³

Because the City has failed to carry its burden of demonstrating that this particular provision satisfies intermediate scrutiny, I will preliminarily enjoin its enforcement. However, with respect to § 62-4, and its related provisions, §§ 62-2 and 62-5(9), there are many possible applications of the ordinances that do not raise First Amendment concerns. For example, there is no free speech concern as to a prohibition on the sale of items that have no expressive content and thus are not entitled to First Amendment protection.

“When some applications of a statute are constitutional, but others are not, the Supreme Court has explained that courts should strive, if feasible and consistent with the legislature’s

²³ Because the City has not met its burden of justifying §§ 62-5(b)(10) under intermediate scrutiny, I need not determine whether the provision is a content-based restriction subject to strict scrutiny. I note, however, that the Ninth Circuit, sitting *en banc* in *Berger, supra*, 569 F.3d 1029, held that a “passive solicitation rule” quite similar to § 62-5(b)(10) of the City Code, applicable to street performers at a public park and tourist attraction, was a “content-based regulation” that did not satisfy strict scrutiny. *Id.* at 1050.

intent, ‘to enjoin only the unconstitutional applications of a statute while leaving other applications in force.’” *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 257 (4th Cir. 2010) (quoting *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006)). In this case, no particular textual portion of § 62-4 is severable. Rather, what must be enjoined, if possible, is the statute’s application to sales that constitute protected expression under the First Amendment. To be sure, this presents a “line-drawing problem,” *Mastrovincenzo*, 435 F.3d at 85, which requires a court to consider whether the items that are sold “serve a predominantly expressive purpose,” *id.* at 97, or, conversely, “have a predominantly utilitarian, not an expressive, purpose.” *Hunt, supra*, 638 F.3d at 716. In some situations, this will require case-by-case adjudication.

In my view, it is possible to craft an injunction that will apply only to presumptively unconstitutional applications of Ocean City’s sales ban. In *Hunt*, the Ninth Circuit upheld against First Amendment challenge a ban on boardwalk sales that contained an exemption tailored to protect expressive conduct. *See id.* at 714-17. Moreover, the *Hunt* Court determined that the exemption was not unconstitutionally vague, *id.* at 714, which is a virtue in an injunctive provision as well as a statute, for a federal court must frame its injunctions “so that those who must obey them will know what the court intends to require and what it means to forbid.” *Int’l Longshoremen’s Ass’n, Local No. 1291 v. Phila. Marine Trade Ass’n*, 389 U.S. 64, 76 (1967).

Therefore, I will adopt the standard considered in *Hunt* in enjoining the enforcement of §§ 62-2, 62-4, and 62-5(9) as applied to plaintiff or similarly situated persons engaged in protected expressive conduct. In particular, I will preliminarily enjoin the enforcement of §§ 62-2, 62-4, and 62-5(9), only as applied to the sale of items that have been created, written, or

composed by the vendor; are inherently communicative; and have only nominal utility apart from their communicative value.²⁴

C. Registration Requirement

Finally, I consider plaintiff's challenge to the requirement for registration of "unlicensed solicitors," established by City Code, § 62-3, and enforced by § 62-7. The Supreme Court has long been wary of laws "subjecting the exercise of First Amendment freedoms to the prior restraint of a license," *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (citation omitted), and there is a "heavy presumption" against their validity. *Id.* at 130 (citation omitted). Nevertheless, such a law may pass constitutional muster so long as it is content neutral; does not apply to an overbroad "amount of speech," *Watchtower Bible and Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 165 (2002); strikes "an appropriate balance between the affected speech and the governmental interests that the ordinance purports to serve," *id.*; establishes clear criteria for the issuance of a license, such that whether a license is issued is not left to a government official's "boundless discretion," *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 764 (1988); and is ordinarily subject to procedural safeguards to ensure "that the licensor 'will, within a specified brief period, either issue a license or go to court'" to obtain a judicial determination of whether a license may be withheld. *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 802 (1998) (citation omitted).

²⁴ The *Hunt* Court offered examples of items that meet the standard of being "inherently communicative" and having only "nominal utility apart from . . . communication" ("books, cassette tapes, compact discs, digital video discs, paintings, photographs, [and] sculptures") as well as items that do not meet the standard ("housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals"). *Hunt*, 638 F.3d at 714 (quoting ordinance).

Ocean City's registration scheme is not content-based. Moreover, it does not appear that the registration requirement unconstitutionally vests unbridled discretion in an administrative official. To the contrary, from the plain text of § 62-3 and from Mayor Meehan's testimony, it appears that registration of an unlicensed solicitor is essentially a ministerial act, which the city clerk has no discretion to refuse. Although the ordinance contains no express provisions for procedural safeguards in the event of denial of registration, I assume, for the sake of argument, that this is not a constitutional impediment, given the apparently ministerial nature of the registration scheme and Mayor Meehan's testimony that, to his knowledge, a registration has never been denied.

The registration scheme founders, however, due to its overbreadth; it broadly restricts speech and fails to strike a balance between the speech affected and the governmental interests that Ocean City has asserted in support of the registration scheme. In my view, *Watchtower*, one of the Supreme Court's most recent discussions of the constitutional requirements that apply to permit requirements for speech, compels the conclusion that plaintiff is likely to prevail on the merits of his First Amendment challenge to Ocean City's registration ordinance.

In *Watchtower*, the Supreme Court considered a municipal "ordinance making it a misdemeanor to engage in door-to-door advocacy without first registering with the mayor and receiving a permit." 536 U.S. at 153. Jehovah's Witnesses, who "did not apply for a permit," challenged the registration requirement, *id.* at 157, because "door-to-door canvassing is mandated by their religion," *id.* at 160, and, according to their beliefs, they "derive[d] their authority to preach from Scripture." *Id.* at 156-58. The ordinance at issue provided, *id.* at 154-55 nn. 1 & 2 (quoting ordinance):

No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services . . . who intends to go in or upon private property or a private residence in the Village for [the ‘purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services’], shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

The Supreme Court observed that the ordinance applied not only to “commercial activities and the solicitation of funds,” but to “noncommercial ‘canvassers’ promoting a wide variety of ‘causes,’” and “unquestionably” applied “not only to religious causes, but to political activity as well.” *Id.* at 165. According to the Court, the “mere fact that the ordinance covers so much speech raises constitutional concerns.” *Id.* It explained, *id.* at 165-66:

It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor’s office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.

The Court noted “[t]hree obvious examples” to illustrate the “pernicious effect” of such a broad permit requirement. *Id.* at 166. First, the “requirement that a canvasser must be identified in a permit application filed in the mayor’s office and available for public inspection necessarily results in a surrender of . . . anonymity,” despite case law recognizing the rights of the “significant number of persons who support causes anonymously.” *Id.* Second, “requiring a permit as a prior condition on the exercise of the right to speak imposes an objective burden on some speech of citizens” whose “religious scruples will prevent them from applying for such a license” or “who have such firm convictions about their constitutional right to engage in uninhibited debate in the context of door-to-door advocacy, that they would prefer silence to

speech licensed by a petty official.” *Id.* at 167. Third, there was “a significant amount of spontaneous speech that is effectively banned by the ordinance,” because a person’s “decision on a holiday or a weekend to take an active part in a political campaign” or a “spontaneous decision to go across the street and urge a neighbor to vote against the mayor” would be subject to the permit requirement. *Id.*

The breadth of Ocean City’s registration requirement for “unlicensed solicitors” is akin to the ordinance at issue in *Watchtower*. As in *Watchtower*, Ocean City’s registration requirement applies to both commercial and non-commercial speech. Moreover, Ocean City expressly subjects religious and political solicitation, as well as street performers, to the registration requirement, in order to avoid the offense of panhandling. *See* § 62-34. Also like the *Watchtower* ordinance, Ocean City’s registration requirement effectively prohibits anonymous or spontaneous speech, solicitation, and performance.

Although the *Watchtower* Court noted with disapproval the breadth of the ordinance before it, the Court also stated that the “breadth and unprecedented nature of this regulation does not alone render the ordinance invalid.” *Watchtower*, 536 U.S. at 168. The Court explained: “Also central to our conclusion that the ordinance does not pass First Amendment scrutiny is that it is not tailored to the Village’s stated interests.” *Id.* In *Watchtower*, the Village of Stratton advanced three interests in support of its ordinance: “the prevention of fraud, the prevention of crime, and the protection of residents’ privacy.” *Id.* at 164-65. The Court had “no difficulty” concluding that these were “important interests,” *id.* at 165, but determined that the ordinance was not tailored to advance any of them.²⁵

²⁵ The *Watchtower* Court expressly declined to address the applicable degree of judicial

Here, the only interests that Ocean City has advanced in support of the registration requirement are the City's desires to protect children from potential inappropriate conduct by costumed street performers, whose identities would be hidden by the costumes, and to protect street performers from unfounded accusations of misconduct. These are clearly legitimate governmental interests. But, simply put, the ordinance is not narrowly tailored to achieve them. To the contrary, the registration requirement is vastly overinclusive with respect to the City's stated concerns about the anonymity of costumed performers. Rather than applying only to costumed performers, for example, the ordinance applies to all performers (regardless of whether they perform for children or in costume), as well as to religious or political solicitors who do not engage in street performance. Moreover, there is no indication that the registration requirement involves any precautions against predation on children (such as checking an applicant against a sex offender registry, or a criminal background check). Indeed, on its face, the ordinance does not even require an applicant to produce identification. Instead, it requires only that an applicant take an oath (which can be waived) and pay a nominal fee.²⁶

Moreover, even if the City were to rely upon its interests in preventing congestion and ensuring the free flow of pedestrian traffic (which it has not expressly done), the registration

scrutiny, "because the breadth of speech affected by the ordinance and the nature of the regulation make it clear that the Court of Appeals erred in upholding it," regardless of the standard. *Watchtower*, 536 U.S. at 164.

²⁶ In another respect, the registration requirement is underinclusive. According to Mayor Meehan, the City receives millions of visitors in the summer months, and hundreds or even thousands are on the boardwalk on any given evening. Ocean City does not check identification or in any way restrict the entry of the general public onto the boardwalk. Any of the multitude of anonymous visitors to the boardwalk every evening could pose similar dangers to children, or could similarly be at risk of being falsely accused. Yet, Ocean City's ordinance obviously does not apply to them. The ordinance's simultaneous overinclusivity and underinclusivity is a hallmark of a regulation that is not narrowly tailored.

requirement is not tailored to serve those interests either. For instance, Ocean City's registration requirement does not designate a particular boardwalk location for each registered performer or solicitor, nor does it limit the total number of performers and solicitors who may be registered or who may operate on the boardwalk at any given time.

In short, based on the record presently before me, Ocean City's registration requirement for "unlicensed solicitors" does not satisfy First Amendment scrutiny under the Supreme Court's decision in *Watchtower*, because the ordinance is overbroad and insufficiently tailored to the legitimate interests that the City has articulated. Accordingly, plaintiff has established a likelihood of success on the merits as to the registration requirement, and I will preliminarily enjoin its enforcement. In order to effectuate this ruling, I must preliminarily enjoin both the registration requirement itself, which is contained in § 62-3, as well as the provision that bans solicitation and/or street performance by persons who have not registered, which is found in § 62-7.

D. Security

Rule 65(c) of the Federal Rules of Civil Procedure requires that a court "may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Fourth Circuit has explained that this rule "is mandatory and unambiguous." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999). Ordinarily, "failure to require a bond upon issuing injunctive relief is reversible error." *Id.* Although a court "is not free to disregard the bond requirement altogether," a court "has discretion to set the bond amount 'in such sum as the court deems proper.'" *Id.* (quoting rule).

Because Ocean City has consented to the waiver of the bond requirement (ECF 13), I will not impose a bond. In any event, I note that while the City will not be able to collect the seven dollar fee from registrants while § 62-3 is enjoined, Mayor Meehan testified that the nominal registration fee merely covers the administrative costs of the registration requirement. Because the registration requirement will be enjoined, the City will not incur those costs. *See Maryland Department of Human Resources v. United States Department of Agriculture*, 976 F.2d 1462, 1483 n.23 (4th Cir. 1992) (stating that district court has “discretion to set a bond amount of zero where the enjoined or restrained party faces no likelihood of material harm”); 11A WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE § 1954, at 293 (2d ed. 1995, April 2011 Supp.) (stating that a “court may dispense with security altogether if the grant of an injunction carries no risk of monetary loss to the defendant”).

E. Conclusion

For the foregoing reasons, I will grant in part, and deny in part, plaintiff’s motion for a preliminary injunction. In particular, I conclude that, with respect to City Code, §§ 62-3 and 62-5(b)(10), plaintiff has established that he is likely to succeed on the merits of his First Amendment claim; that he is likely to be irreparably harmed in the absence of injunctive relief; and that the balance of equities and the public interest favor entry of an injunction. Accordingly, I will preliminarily enjoin enforcement of §§ 62-3 and 62-5(b)(10), pending the conclusion of this litigation or further order of the Court, as well as application of § 62-7 to persons who would be subject to the requirement to register as an “unlicensed solicitor” under § 62-3. Similarly, plaintiff is likely to succeed on the merits of his challenge to §§ 62-2, 62-4 and 62-5(b)(9), and I will preliminarily enjoin enforcement of those provisions, as applied to plaintiff and others

EXHIBIT 4

BOARDWALK TASK FORCE



*Lieutenant Mark A. Pacini
Evening Shift Commander
Ocean City Police Department*



Ocean City Police Department

Ocean City, Maryland 21842

February 9, 2015

To : Boardwalk Task Force
Via : Ross Buzzuro
Chief of Police
From : Mark A. Pacini
Lieutenant, Evening Watch
Subj : Boardwalk Task Force – Public Hearing Presentation

It is with great pleasure that I meet with you as we attempt to make not only the boardwalk, but our entire town a safe community for both citizens and tourists alike. As this task force moves forward I wish to share with each of you that I am available on a 24/7 basis to answer any questions that may arise. Please do not hesitate to call.

Additionally, I am in possession of an extensive quantity of relevant material that I would like to share. The limited time afforded at the hearing will not allow me to present all of this material. Therefore, I have included much of it in this packet for you to study in preparation for our work.


Lt Mark A. Pacini

See Testimony & Attachments



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



Introduction

My name is Mark Pacini. It is a pleasure to come before you as we join our efforts to make the Town of Ocean City safer. I am a Lieutenant with our police department, and I have 25 years of experience policing in Ocean City. The majority of my summer deployment assignments have been in the southern area of our town which, as you know, includes our boardwalk. Beginning in 1989 my experience on the Boardwalk includes patrolling by foot and bicycle. Additionally, I have worked as a plain clothes covert and semi-covert operator with the narcotics and plain clothes operations. Since the early 1990's I have been responsible for a squad of officers as a first line supervisor. Eventually I was assigned as the Southern District Evening Watch Commander, responsible for the OCPD's largest patrol shift during summer configurations. The majority of my work has occurred during the evening shift hours which encompass the 5:30 p.m. to 3:30 a.m. time frame.

Task Force Presentation

I come before you today to discuss ways that we can make our Boardwalk safer. I would like you to know that I believe our Boardwalk is exceptionally safe. But there is always room for improvement.

Most important is that we make everyone's Boardwalk experience a safe one. Also of great concern is today's 24/7 social media "trending" news environment. It is very important that we are acutely aware of how we are perceived. The duty of this task force is to assure our tourist destination resort town is safe. But we must also be keenly aware of public perception. Crime is an issue that we can tackle. But we cannot forget the *fear of crime*, which has unfortunately landed our Boardwalk on the front pages of our newspapers.

During November of 2014 I was fortunate to meet with attorney's from the Venable's law firm, the legal team assisting the Boardwalk Task Force. Prior to that meeting they requested that I answer a series of questions that would give all involved a better feel for the concerns of our community. I have included the questions and my answers below, and have provided attachments and photographs to assist with clarification. I have alphabetized my answers for ease of reference during my testimony. You should be aware that I have a large amount of information that could assist you in making recommendations. The quantity of material that I have collected during the past three years is far too voluminous to present here today, but I would be glad to meet with each of you to share this information.

I would like each of you to know that I serve this community as a Lieutenant in the Police Department. As a member of a paramilitary organization, it is my custom to adhere to a strict chain of command. I believe it is important that I lay it all out on the table. It is my belief that without transparency we will not succeed. We have a narrow window of time and opportunity to get this right. I want us to do so - as my fellow officers, particularly the ones who patrol the area called the Southern District, have tremendous pride in our work and concern for the safety of our citizens and tourist as well as the character of our city's Boardwalk.

That being said it is my belief that the street performers are not going away, although some would like to see this happen. During my travels in the past few years I have seen street performers in New York City, Washington D.C. and Orlando, Florida. I have witnessed the rights and privileges of our 1st Amendment being tested right in front of our White House. One would think that during a time of heightened homeland security - law enforcement could maintain a clear Pennsylvania Avenue. This is not the case. My observation of events made me realize that there is no possibility of our eliminating street performers from the Ocean City Boardwalk in the near future.

I would like to continue with my presentation. Please stop me at any time if you have questions.
Thank You.



Answers to Venable's Questions

Question # 1

Identify what Judge Hollander's rulings have required the town to do with respect to boardwalk regulation;

Answer

The two main requirements from the Hollander Decision:

- A. Eliminated the requirement for performers to obtain a permit (from City Hall) to perform on the boardwalk.

-This decision caused some issues with respect to gauging number of performers that would be performing on the boardwalk.

- B. Gave performers the permission to sell their art.
Page 38 of the Hollander Memorandum Opinion:

"Chase's art and performance clearly constitute fully protected expression and his sale of his own paintings is also fully entitled to the protection of the first amendment."

-This decision was cause for concern for Law Enforcement.

- Based on my experience I knew that giving the ability to sell items on the boardwalk would cause great concern for our business owners - ultimately tying up police resources to review and handle these types of complaints. (These complaints still exist today!)

- Determination of expressive material is still a daily review.

Question # 2

Identify what the town has done to implement the legislation that Judge Hollander modified and that currently exists;

Answer

- C. From the Law Enforcement Perspective

1. Instituted the "Gray Area Expressive Material Process." (Green Light Principal)

2. Created a log to keep an up-to-date of "daily" street performer requests.

(Page # 10)

3. Developed an education flyer of the new rules to be distributed to performers.

4. Met with merchants and citizens to educate them on the impact of the Hollander decision.

5. Streamlined all performer requests to the Police Department – thru City Hall, with final decision through Lt Pacini via City Solicitors Office. (No Exceptions)

-This request process was a significant undertaking as the Chief's Secretary fielded all phone requests and forwarded to me via e-mail for review. Either I could render a decision or I would have to forward to city legal for a ruling. There was no room



for error here as denying one person the ability to perform could result in additional law suits.

6. Limited enforcement to only a few officers (2013)
7. Conducted additional training for OCPD Supervisors (2014)

Question #3

Identify the problems that have arisen as a result of that implementation;

Answer**OVERALL**

- D. Created uproar from merchants, citizens and tourists.
- E. Generated a stream of negative press for our tourist destination.
- F. Diverted valuable resources (Police, City Hall) to the Street Performer Problem.”
- G. Encouraged merchants to violate City Ordinance and conduct “Street Performing Business” on the boardwalk for profit.

H. SPECIFIC ENFORCEMENT ISSUES – OCPD

1. Determining the exact definition of a performer.
 - Selling books?
 - CD's are allowed to be sold even when they are not performing?
 - Person selling paintings – Should they be painting?
 - Tarot Card Readers?
 - Henna?
 - Cartoon Characters? (Trademark Infringement)
 - Stages, Platform, (Page # 12-14)
 - Disc Jockey
2. Performer & Citizen Safety (Task Force Focus)
 - Weapons Page (Page #14)
 - Spray Paint Fumes
 - Gas Generators (Page # 15)
 - Gasoline
 - Pole Dancing (Page #16)
 - Using the Street
 - Umbrellas
 - Hula Hoop Performer asking Kids to do their performance
 - Touching of Other Person body
 - Face Painting (Page # 15)
 - Henna
 - Feathers in the Hair
 - Hair Braiding
 - Finger Nail Painting (Page 15)
 - General Statement – about obeying all laws: Fed, State, Local,
 - Proliferation of J-1 & F-1 Performers / Performing outside Homeland Security Rules



4. Crowd Control (Task Force Focus) (Page # 17 -18)
 - Can we move the crowd?
 - Can we move the performer who is causing the crowd?
5. Payment
 - What is allowed? Can they mark a price tag or just collect tips.
6. Sign Display
 - Zoning Ordinances
 - Attaching to City Property
7. Foot Print of Performance area
 - Fire Hydrant
 - Rod Stuart Impersonation
 - Chase
 - Can Performers occupy City benches (Page #20)
 - Chains, Ropes, Cones, Tip Buckets LED Lights
8. Business putting street performers to advertise the business
9. Age of Performer
 - Children Safety and Parent supervision
10. Abandon Property
 - Performers property lying on the boardwalk (What is the time Limit)
11. Cartoon Characters
 - Kid Safety
 - Sex Offender
 - Unidentifiable
12. Commercial 1st Amendment Issue
 - Handing advertisements from your property onto the City Boardwalk
 - Handing out merchandise (Mardi Gras Beads) from property onto the Boardwalk
13. Religious, Political, Philosophical –
 - Anywhere but North Division Street?
 - Pamphlet Display Cases
14. Noise Level of performers
Officers need an ordinance they can enforce in the Boardwalk environment
15. Thorough Definition – Expressive Material (Task Force Focus)

Question #4

Describe the current state of the law;

Answer

- I. The current state of the town ordinance with respect to street performers is somewhat confusing for law enforcement personnel to enforce. Combine this confusion with looming potential for civil liability; cripples law enforcement. The following upgrade is needed: (Page # 21)
 - *Relay the Chase and Hassay incidents.*



1. Define "performer"
2. Define what constitutes and what does not constitute a performance.
3. Lay out an ordinance with specific citing sections (E.g. Improper Location, Selling of Non-expressive Material, violation of location etc... and all issues cited in Letter "H" of this document)
4. The current ordinance lacks a clear cut section to cite.
5. The noise ordinance as it relates to street performers also needs to be revamped.
(A review of City of Santa Monica Ordinance would be a good start)

Question # 5

Propose a legislative and/or other legal solution to the town's problems.

Answer

- J. Review of Hollander's decimation of Ocean City's Ordinance
- K. Review of existing nationwide ordinances:
 1. Myrtle Beach, South Carolina
 2. Santa Monica, California
 3. NY City Parks,
 4. Fort Myers Beach, Florida
 5. Any others recommended to the Task Force
- L. Pass an updated ordinance to combat:
 1. All previous mentioned issues.
 2. Merchants conducting business on the Boardwalk as street performers.
 3. The issues of foreign students performing in violation of Homeland Security Rules.
- M. Upon completion of the ordinance conduct a public relations media campaign to inform performers, merchants and citizens.

Additional
Review of All City Ordinances
Overall Cleanliness of the Town and Boardwalk
Merchants Responsibility



ATTACHMENTS



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



Reportable Incidents

Below are the criminal incidents relating to Street performers for the Summer of 2014

(1) 2014-00-1502

On May 24, PFC Zurla responded to Somerset Street for the report of harassment and threats. A henna tattoo artist wanted to make a complaint that an identified business owner had threatened to kill him. Zurla was advised that the business owner then physically moved the complainant's henna tattoo stand three feet. The business owner then placed his own henna stand next to the complainant's and placed a sign that read "free henna."

(2) CC # 2014-00- 1519

On May 24, Lt Pacini cited a street performer (\$100 municipal citation) for performing mid-block between North Division and 1st Street. The performer had been given a warning the day before and was given a street performer flyer that explained the rules.

(3) CC # 2014-00- 3438

On June 21, RSO Fry responded to 1st Street and Atlantic Avenue for the report of a theft. A henna tattoo boardwalk artist advised that someone stole his backpack from his henna stand. The complainant believed it was stolen while drawing a tattoo on a customer. Credit cards of the victim were used in Ocean City on the same day as the theft.

(4) CC # 2014-00- 3688

On June 25, Officer Laughlin observed two Trimper's ride employees chasing after a subject. It was determined that the suspect had stolen a Dew Tour sign. The Trimper's employees gave chase at which time Laughlin placed the subject under arrest. During questioning the suspect advised he was a face painter performer who was out of money and he was going to sell the Dew Tour sign for \$20 dollars.

(5) CC # 2014-00- 3737

On June 26, RSO Bowersox seized a henna stand at Caroline Street after it was determined to be abandoned for an entire day. The stand was transport to the police impound by OCPD vehicle.

(6) CC # 2014-00- 5112

On July 20, Sergeant Kelly was off-duty and on the boardwalk with his family. At Talbot Street he observed a highly intoxicated subject interfering with the Gold Bicycle performer. The intoxicated subject was moved away from the performer by a friend and the whistle of the performer. A short time later Kelley observed the intoxicated subject run full speed at the performer, tackle him, knock him off his bike and smash him to the ground in front of a large crowd. Kelley intervened and called on-duty officers to make the arrest.



(7) CC# 2014-00-5853

On August 6, Lt. Pacini received information from a confidential source (CS #1) that an identified business on the boardwalk was hiring people to wear costumes and stand on the boardwalk to collect money. CS#1 was advised by the store manager that they would be paid \$7 per hour to wear a costume, take pictures with tourist and collect tips. At the end of their first night of employment, CS#1 returned with the tip bucket and handed it over to the manager. The manger refused to pay CS #1 and advised CS#1 that they had to work two nights in order to get paid. Eventually CS#1 was paid but only for the partial time that they worked.

On August 14, Lt Pacini encountered a subject near the identified store. The character was in violation of a city ordinance and was identified as a J-1 Student. This J-1 student advised that he was being paid by the store to take photos and collect tips. Based on the investigation Lt. Pacini cited the store manager and owner \$1000 each for conducting business on the boardwalk. This business was referred to the City Manager for a business license suspension hearing.

(8) CC # 2014-00- 6093

On August 11, Sergeant Grady issued a costume character performer a \$200 municipal citation for collecting money mid-block between Dorchester and Talbot Streets.

(9) CC # 2014-00- 6311

On August 16, two subjects watching the pole dancer bumped into each other causing one to jump off the boardwalk onto the street end. A verbal altercation ensued in which fighting words were used. Plain clothes officers witnessed the entire incident and made the arrest of the primary disorderly aggressor averting an altercation during which news media was present and filming the performer.

(10) CC # 2014-00- 6472

On August 20, RSO Miller responded to Somerset Street for the report of an assault. A street performer who paints himself silver and juggles was approached by a subject who stood next to him and heckled him and told him, "The gold guys is better." The complainant advised that a 70 year old woman asked the heckler why he was being such a jerk. The performer's father intervened at which the heckler told the father, "If you touch me I'll gut you like a pig."



EXPRESSIVE MATERIAL LOG

Updated 7-17-2014 / 8176



"Gray Area" Expressive Material Process

EXPRESSIVE MATERIAL MUST HAVE BEEN CREATED, COMPOSED, WRITTEN BY THE PERSON WHO SELL, RENTS, OR EXCHANGES THEM FOR A DONATION

INHERENTLY COMMUNICATIVE (Material that can be SOLD)
Only Nominal Utility apart from their Communicative Value

1. Books
2. Pamphlets
3. Cessette Tapes
4. Compact Discs
5. Digital Video Discs
6. Paintings
7. Photographs
8. Sculptures

NOT INHERENTLY COMMUNICATIVE (CANNOT SELL THESE ITEMS)

AND / OR

Have More Than Nominal Utility apart from their Communicative Value

- | | |
|-------------------------|--------------------|
| 1. House wares | 8. Perfume |
| 2. Appliances | 9. Lotions |
| 3. Articles of Clothing | 10. Candles |
| 4. Sun Glasses | 11. Jewelry |
| 5. Auto Parts | 12. Toys |
| 6. Oils | 13. Stuff Animal's |
| 7. Incense | |

1. The Ultimate "On Scene" Decision maker is the Trained Police Supervisor
2. Questions about Expressive Material – Posed to the Trained Police Supervisor
 - a. Some Material – Immediate YES
 - b. Some Material – Immediate NO
3. Questionable Expressive Material (Gray Area Expressive Material)
 - a. **WILL BE ALLOWED** – Until a determination is made
4. **Determination Process**
 - a. Draw an Incident #
 - b. Identify the Artist
 - c. Narrative Description of the EXPRESSIVE MATERIAL being sold which should be added to this log
 - d. Photographs with Smart Phone (Administrative Only)
 - e. Forward Information to LT PACINI via E-Mail for review!
 - f. **ENTER INFORMATION INTO EXPRESSIVE MATERIAL LOG BELOW**
 - g. **UPDATE THE TOP OF THIS PAGE WHEN YOU ADDED NEW INFORMATION WITH DATE AND ID NUMBER**
 - h. Any pressing issue you can call Pacini at 443-235-4423

Performances already ruled on by the City Solicitor

YES

- Karaoke
- Karate Demonstrations
- Face Painting
- Balloon Sculptures
- Actors who ask Citizens to Participate
- Tarot Card Reading
- Palm Reading
- Distribution of "Free Meal Tickets by Sun Spot (ANYWHERE on the Walk)
- Henna Tattoos
- Feathers Attached to Hair (Ruling Changed 8-6-12)
- DJ's that "Scratching" manipulating music or has accompaniment
- Handmade Masks

NO

- Hair Braiding
- ~~Feather Attachment to Hair~~
- Massage Therapy
- Photo Portrait Machines
- Wax Hand Dipping
- Handmade Walking Sticks
- Key Chains/ Jewelry Boxes
- Skateboards/ Cutting Boards

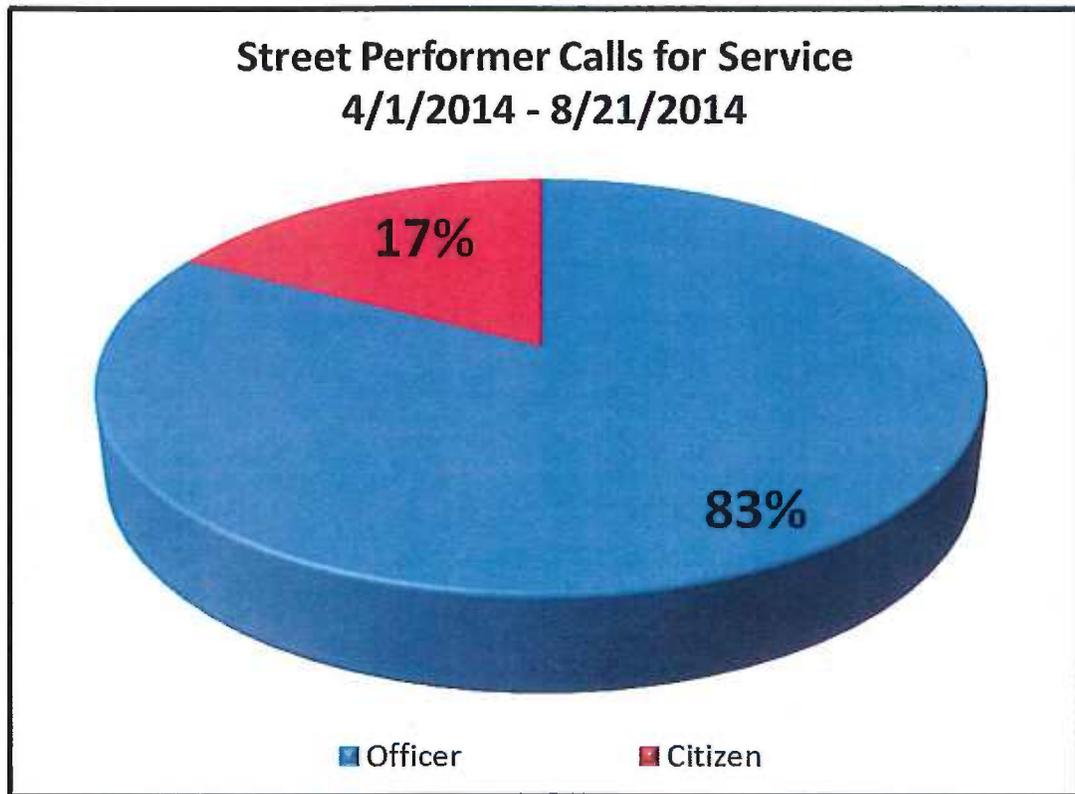


Street Performer Calls for Service 2014

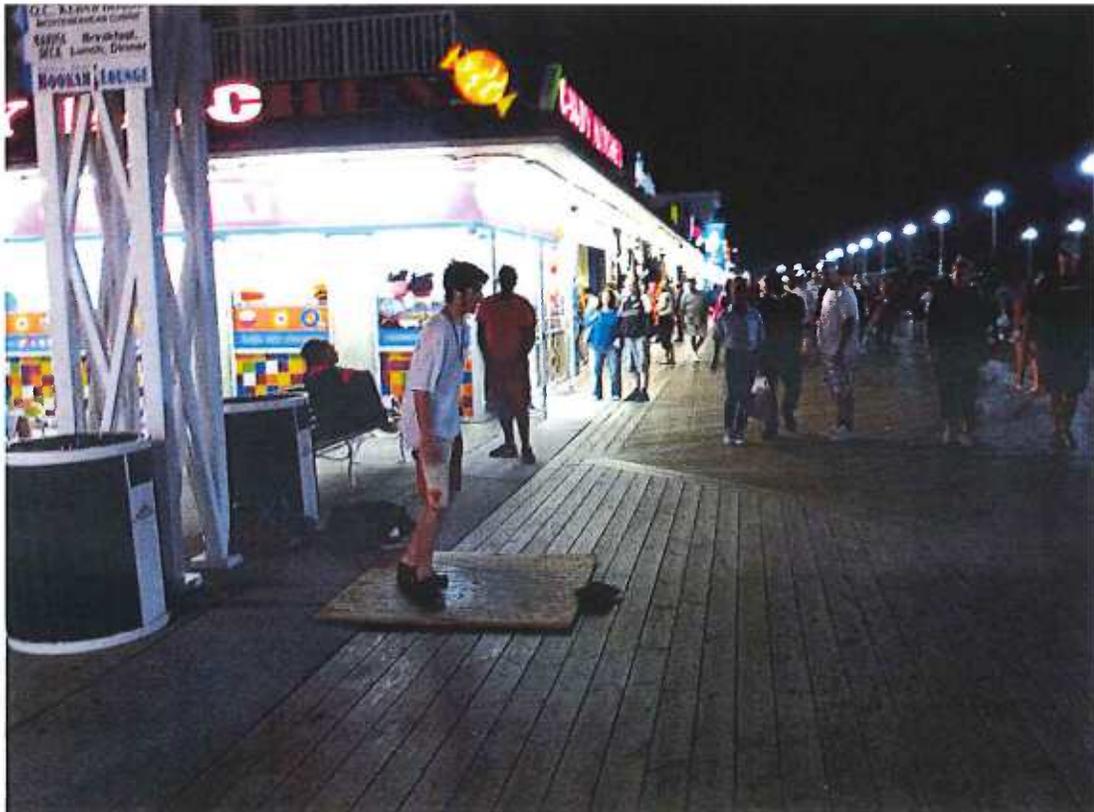


| | |
|----------------|------------|
| | CFS |
| Officer | 211 |
| Citizen | 44 |
| TOTAL | 255 |

NOTE: 2014 numbers only go through 8/7/14



Foot Print / Stages / Platforms



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini





Police Department
Ocean City - Maryland
Lt. Mark A. Pacini





Weapons



Face Painting Cart / Finger Nail Art (Not Allowed) / Gas Generators



Pole Dancer



Pole Dancer Defense



Crowds



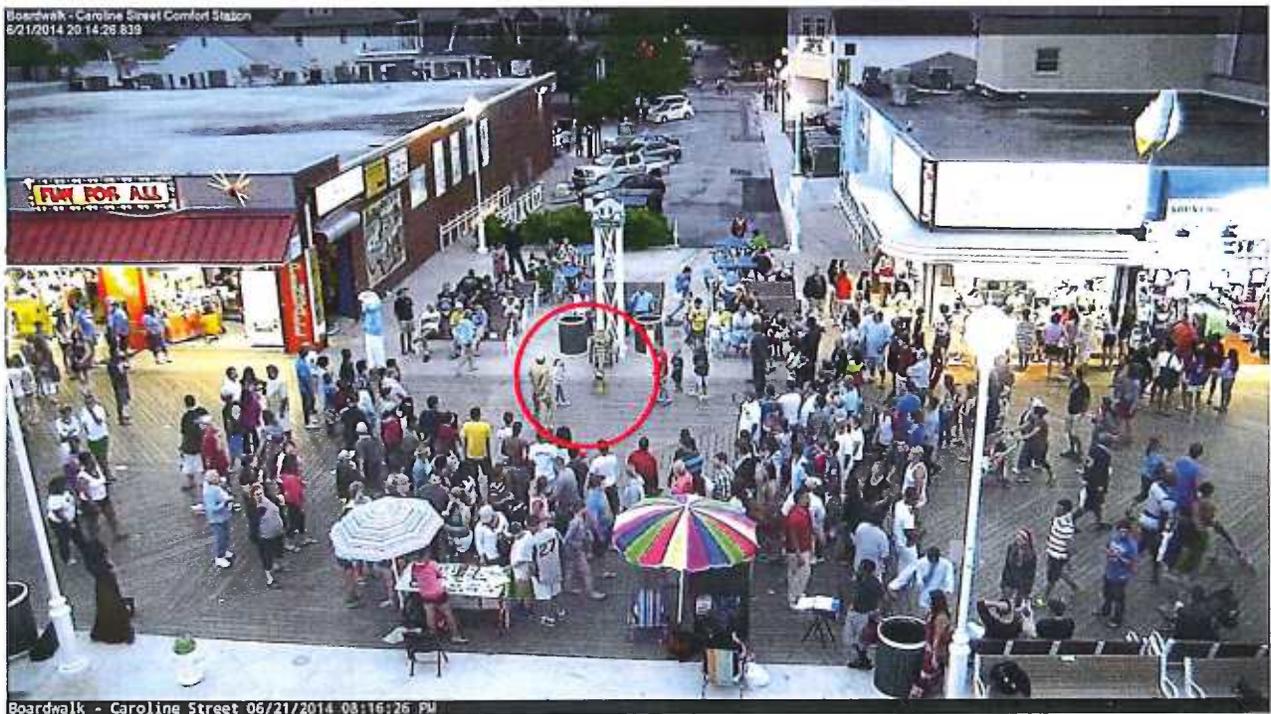
Police Department
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Police Department
Ocean City - Maryland
Lt. Mark A. Pacini

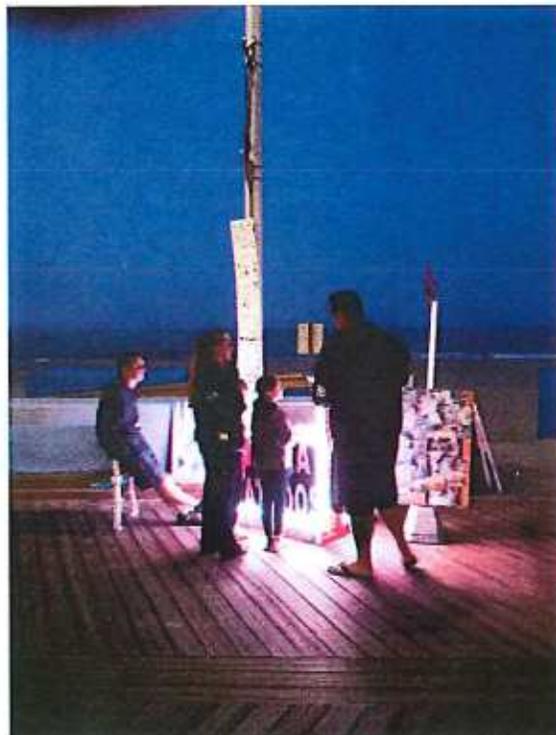




Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



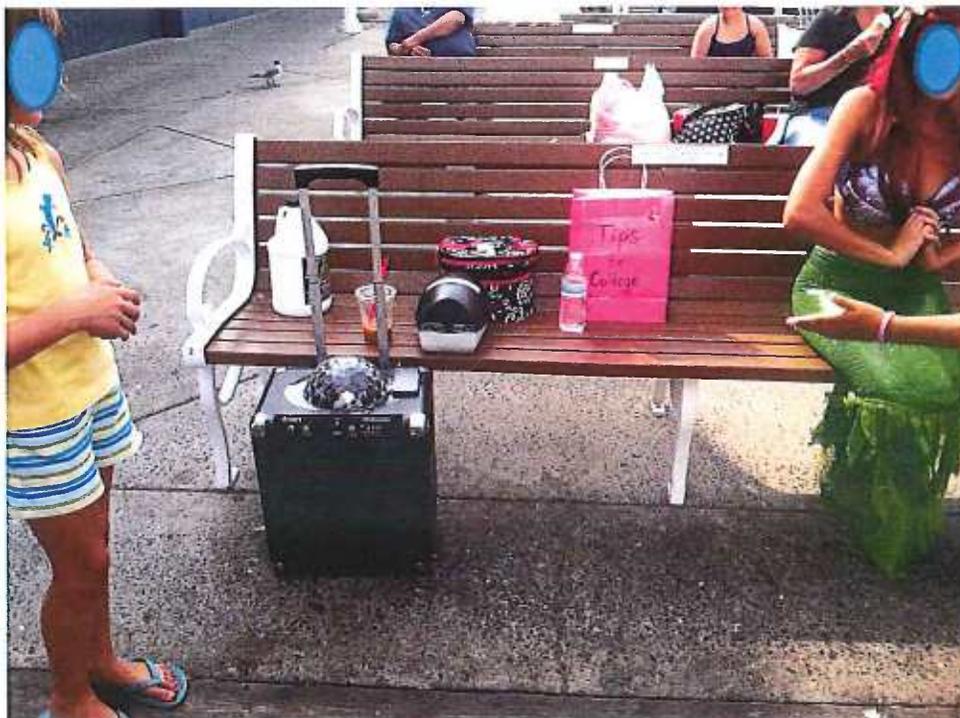
Sign Display / Umbrellas / Lighting



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



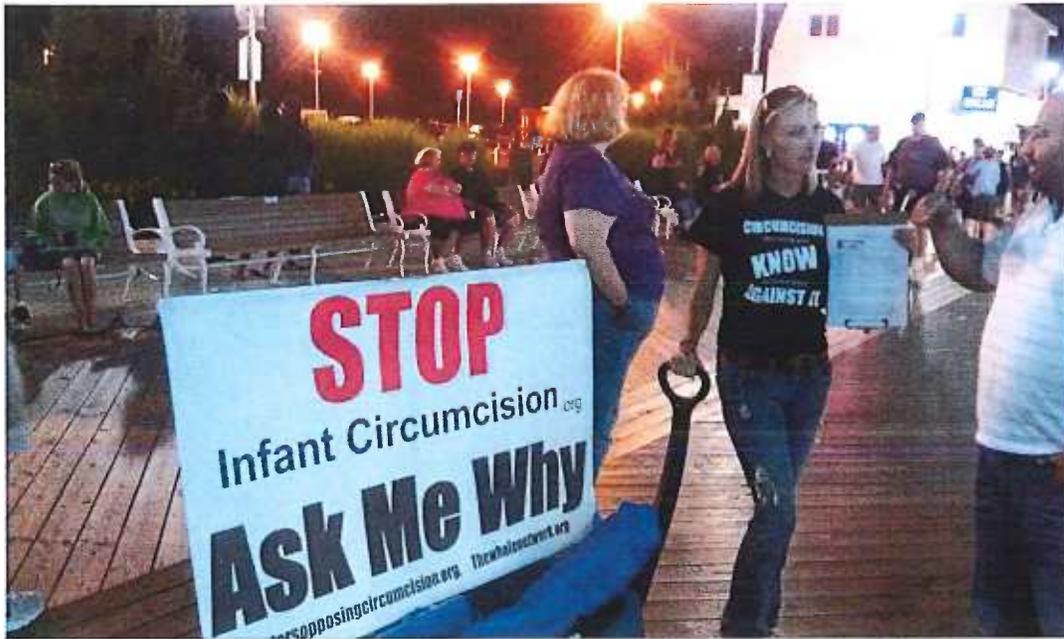
Use of City Property



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



Religious / Political / Philosophical



PEDDELING & SOLICIATING

Included below is Section 62 of the Town Code. An injunction issued by Judge Ellen Hollander eliminated the enforcement of several portions of this ordinance. The areas highlighted in Yellow were impacted by the Judge Hollander's injunction issued on September 9, 2011.

ARTICLE I. - IN GENERAL

Sec. 62-1. - License required.

Sec. 62-2. - Limitations on commerce on the boardwalk.

Sec. 62-3. - Registration of persons exempt from license requirement.

Sec. 62-4. - Limitations on commerce on the boardwalk and immediately adjoining public areas.

Sec. 62-5. - Prohibited acts on boardwalk.

Sec. 62-6. - Manufacturers.

Sec. 62-7. - Applicability of general licensing provisions.

Secs. 62-8—62-30. - Reserved.

Sec. 62-1. - License required.

Except as herein provided, no person shall engage in or carry on in Ocean City, Maryland, the business, occupation or activity of solicitor, distributor, peddler or hawker of any merchandise or commodity



Police Department
Ocean City - Maryland
Lt. Mark A. Pacini



upon the streets or sidewalks of Ocean City, without first having obtained a license for such business, occupation or activity as provided for in chapter 14, article II, Licensed Occupations.

62-2

SHALL NOT ENFORCE as applied to any person engaged in the public sale rental or exchange for a donation of Expressive Material as defined herein

Sec. 62-2. - Limitations on commerce on the boardwalk.

It is unlawful for any person, upon the boardwalk or upon its benches, stairs and other fixtures, to engage in the public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services.

62-3

SHALL NOT ENFORCE

Sec. 62-3. - Registration of persons exempt from license requirement.

(a)

(1)

The City Clerk shall, upon the making of the required oath and upon payment of the administrative fee, established by the Mayor and City Council, allow such person to register as an unlicensed solicitor and shall issue an identification tag or card to such person. The Clerk may waive the making of the oath and/or the administrative fee upon request supported by a valid reason. No person shall carry on such activity without first having obtained the permit required hereunder.

(2)

Registration as an unlicensed solicitor shall be permitted during normal business hours of the Clerk's office except for Fridays or the day before a city holiday, when the registration time shall be limited to between 10:00 a.m. and 2:00 p.m.

62-4

SHALL NOT ENFORCE as applied to any person engaged in the public sale rental or exchange for a donation of Expressive Material as defined herein or

Sec. 62-4. - Limitations on commerce on the boardwalk and immediately adjoining public areas.

It shall be unlawful for any person upon the boardwalk or upon its benches, ramps, stairs and other fixtures or upon the Caroline Street pad, or other street-end pads adjoining the boardwalk or upon any other publicly owned surface or street situated within 75 feet of the edge of the boardwalk, or upon South Division Street from Philadelphia Avenue west to the Bay or upon South First Street from Baltimore Avenue east to the Boardwalk to engage in the public sale, rental or exchange for a donation of any goods, wares, merchandise, foodstuffs, refreshments or other commodities or services. This section shall not apply to operation in the restricted area of (1) city-owned or licensed transportation services, (2) telephone service, (3) franchised concessions on city-owned property which was constructed for such use, (4) franchised concessions on the beach for renting of beach equipment and taking photographs, and (5) special events with permits approved by the Mayor and City Council, for Somerset Street from Baltimore Avenue east to 75 feet west of the edge of the Boardwalk, or for South Division Street from Philadelphia Avenue west to the Bay, or for South First Street from Baltimore Avenue east to the Boardwalk.



62 – 5 (b) (9) (10)

As applied to any person engaged in the public sale rental or exchange for a donation of Expressive Material as defined herein

SHALL NOT ENFORCE

Sec. 62-5. - Prohibited acts on boardwalk.

(a)

The Mayor and City Council, having determined that the boardwalk is a major tourist attraction with congregations of pedestrians and the boardwalk tram necessitating the regulation of the location of activities, allowed hereunder, for public safety purposes, has determined that the best interest of the public health, safety and general welfare is best served by limiting such activities to the area within the extended boundaries of street ends.

(b)

It shall be unlawful for any person engaging in the permitted activity of peddling, soliciting, hawking or street performing on the boardwalk to:

(1)

Exercise or perform such activity or display in any area of the boardwalk other than within the area encompassed in the extended boundaries of the street ends.

(2)

Use anything other than portable tables or chairs for display purposes.

(3)

Set up any display on or within ten feet of tables, adjacent property entrance or exit, or boardwalk tram lane.

(4)

Obstruct or block pedestrian or vehicular traffic, the entrance to ramps and stairways to the beach, the entrance to comfort stations, the concrete pads on the east side of the boardwalk, public telephones, or trash receptacles.

(5)

Reserved.

(6)

Violate the town's noise ordinances, after being warned by a police officer.

(7)

Connect to any municipal electric outlet or private electric outlet without the permission of the owner.

(8)

Use nudity, pornographic materials, or obscenity in any display or performance.

(9)

Conduct sales or exchanges as prohibited by section 62-4 hereof.

(10)

Set a price or fee or accept same for observing or participating in a display or performance, other than being a tip the amount of which is not solicited.

(11)

Handout or distribute any advertising or promotional material which promote an activity, product or service other than that which the peddler, solicitor, hawker or street performer is engaged in as an integral part of the display or performance.



(12)

Use animals, other than for legitimate ADA purposes, fire or other hazardous materials in a display or performance.

(b)

Any person, partnership, corporation, unincorporated association, or other business entity who shall violate any provision of this section or sections 62-3 and 62-4 hereof shall be deemed to have committed a municipal infraction and be subject to the penalties provisions for municipal infractions set forth in section 1-8(c) of this Code.

Sec. 62-6. - Manufacturers.

Nothing herein shall apply to manufacturers or employees and agents thereof, located and doing business in this state, selling to licensed dealers or retailers within the corporate limits of Ocean City. The provisions of this article shall apply to manufacturers making sales directly to the consumer.

62-7 As applied to any person who in the absence of this injunction would be required to register as an unlicensed solicitor pursuant to 62-3

Sec. 62-7. - Applicability of general licensing provisions.

(a)

The provisions of chapter 14, article II of the Code of Ocean City, being general licensing provisions relating to business and trades, shall be applicable to all licenses under this article the same as if specifically set forth herein. It shall be unlawful for any person, licensed or unlicensed, to hawk, peddle or solicit on any city street or public way, boardwalk, beach or any parking lot unless specifically exempted or excepted by chapter 14, article II or this chapter.

(b)

Any person who shall violate section 62-7(a) hereof shall, upon conviction thereof, be deemed guilty of a misdemeanor and subject to a sentence of up to 30 days in jail or a fine of up to \$1,000.00, or both.

(Code 1972, § 72-7)

State law reference— Penalties for ordinance violations, Ann. Code of Md. art. 23A, § 3.

Secs. 62-8—62-30. - Reserved.



EXHIBIT 5







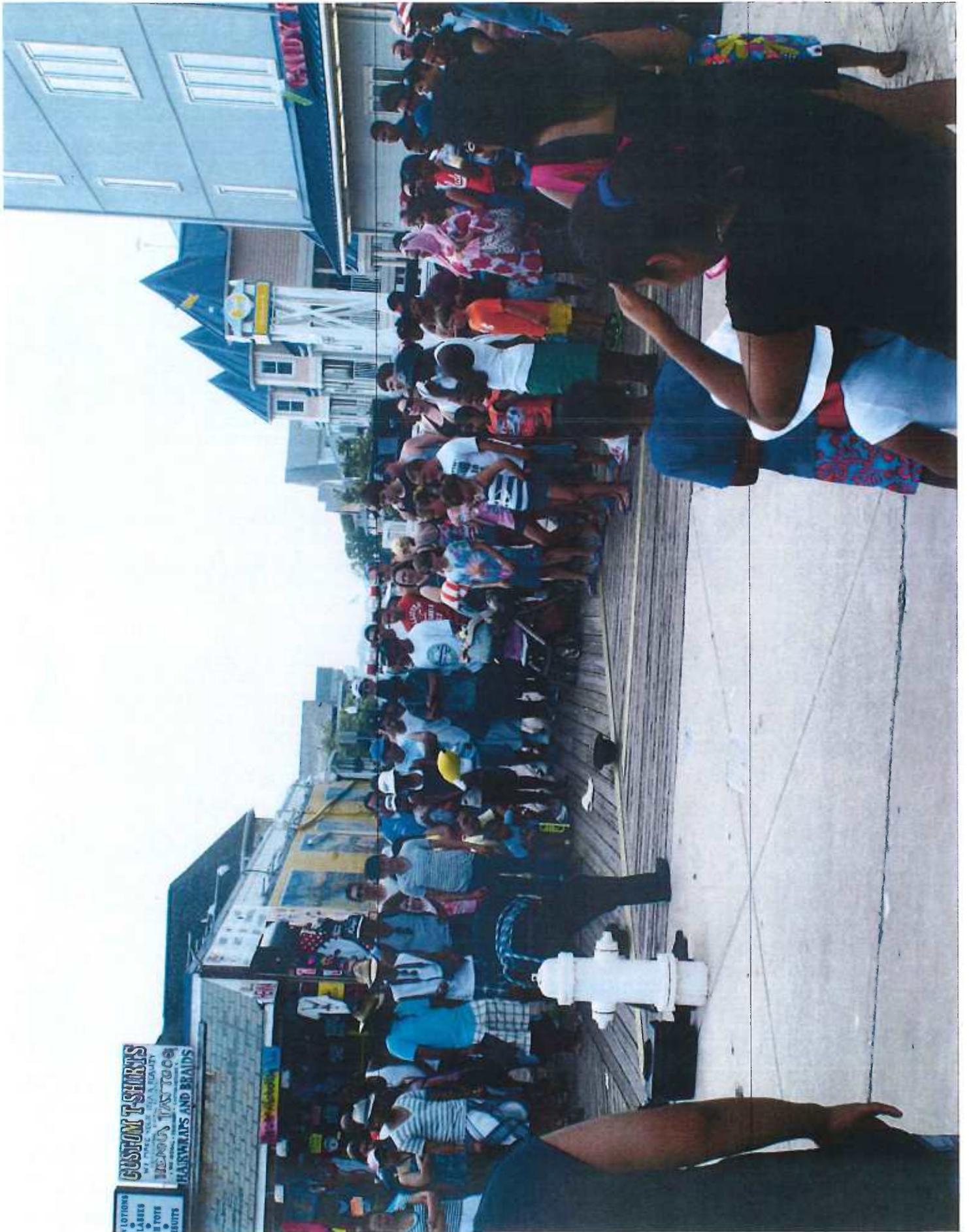








EXHIBIT 6



Office of the Fire Marshal Memorandum

To: Boardwalk Task Force – Mark Chase, Lee Gerachis,
Frank Knight, Bob Rothermal, Greg Shockley
From: David Hartley, Fire Marshal/Deputy Chief
Date: February 18, 2015
Re: Fire Marshal Recommendations
Public Hearing

Pursuant to your efforts to consider recommendations for maintaining safety on the boardwalk, I make the following recommendations for codification, from a life safety and fire prevention standpoint for the use of portable generators by performers and those displaying their products, and clear access to fire hydrants;

Over the past several years I have seen the use of portable generators increase substantially by various individuals to provide electricity for their performances or displays. If used properly portable generators are safe. My concerns is less with the portable generator itself, but with the fueling and/or refueling of them with flammable or combustible liquids in the boardwalk area, in addition to avoiding public access to the hot surfaces of a generator.

(1) Use of Portable Generators and Internal Combustion Equipment:

- a. Generators and other internal combustion power sources shall be operated in accordance with the manufacturer's recommendations.
- b. Generators and other internal combustion power sources shall be separated from combustible/flammable items by a minimum of 5ft (or by that distance specified by the manufacturer) and shall be protected from public contact by fencing, enclosure, or other approved means.

c. Fuel tanks on generators shall be of adequate capacity to permit uninterrupted operation during normal operating hours. Fueling or refueling of generators shall not be conducted on the boardwalk, or in areas that are immediately accessible to the public.

d. Extension cords, if utilized, shall not be located in any public walking surface, or any location where they are otherwise subject to environmental or physical damage. Extension cords shall be maintained in good condition without splices, deterioration, or damage.

e. A minimum of one portable fire extinguisher with a rating of not less than 2A:10BC shall be provided.

(2) Display or performance locations: Fire hydrants shall not be within a performance or display area, and a 36" clear space shall be maintained around the circumference of the fire hydrants, accessible by a 36" wide clear path for access by the fire department, except as otherwise required or approved.

EXHIBIT 7



Dough Roller Restaurants

WAG, Inc.
201 N. Philadelphia Avenue
P.O. Box 419
Ocean City, Maryland 21843-0419
410-289-9106 / Fax 410-289-3590

February 4, 2015

Boardwalk Task Force
c/o City Manager
City Hall
PO Box 158
Ocean City, MD 21843-0158

Members of the Boardwalk Task Force,

As a life-long Ocean City resident and an Ocean City business owner for 35 years, I have very strong opinions regarding the Boardwalk environment.

Ocean City has always celebrated itself as a family-friendly town; I operate my restaurants and hotel under the same principle. My businesses experienced a marked decline in business; most notable was the decline in our hotel business last year. We have received a massive amount of complaints from our customers regarding the activities of Boardwalk performers. Guests have checked out of the hotel early because of noise levels and how late into the night the noise persists. Children are disturbed when they see performers changing costumes on side streets. Parents are upset with the offensive and lewd merchandise displayed in view of Boardwalk pedestrians. I am embarrassed when old friends and regular guests call to ask about "the Ocean City Boardwalk pole dancer" that made regional news and was reported by the Associated Press. This is not the image we want for Ocean City.

People have complained how the Boardwalk has changed; the pleasure of walking the Boardwalk is gone. Ocean City's reputation is suffering.

We have to make legal changes to help the situation. If we want to regain our prominence as a vacation destination for families, we need to make sure one of our most popular draws, the Boardwalk, is safe and welcoming for our guests and their families.

Warm Regards,

William A. Gibbs, Jr.

From: Jamie <jalbri7299@aol.com>
Date: February 8, 2015 at 5:17:35 PM EST
To: knightdds@comcast.net
Subject: Busking public forum

Frank, please see that the committee receives this. Thank you, jeff

To: Task Force Committee

As a boardwalk property owner I apologize I cannot attend these two sessions to participate with the issue of buskers vs Boardwalk stores. This issue has become very important to me, my family, my tenants and the town of OC. However, I thank you for allowing me this opportunity to express my thoughts.

I believe in freedom of speech, and I believe in the rights of the buskers, however I want to know where are the rights of the tourists and where are the rights of the tenants? There must be a way to implement a program that will be agreeable by all parties so we all remember that health and safety is the key issue here.

I believe the artists should be allowed to express themselves, but I also want our costumers to hear themselves speak, or be able to sleep without the repetition of the same music playing outside the windows every day and night. I want my tenants to be able to work in a healthy environment where they don't have to breath in fumes every day from the artist who sits across from them covering his own breath with a mask, while they try to sell shirts and food without a mask. I am also concerned about the costumed characters who seem to congregate together and more and more of them each year, who believe if they too come to OC they will make a "buck". The risk of gangs, violence and turf wars has happened in other locales and only than has been controlled. I don't want OC to wait for the "next" issue to arise. Let's "nip it" now while we have this opportunity to talk and and discuss and make some adjustments.

My wife and I have researched many cities with busking and the most popular answer to all of these cities is having a "rotation" schedule. Allowing buskers to have the opportunity to be at different blocks every day, so they too get the opportunity to have a different customer at different streets AND this way it would also allow store owners to not have the same buskers in front of them every day of the week, which is not healthy over a period of time.

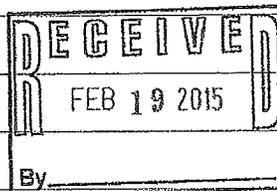
My other concern are the costumed characters on the boardwalk. For years, I was a coach for my sons sports teams In the town, and every coach had to go through a background criminal check. By not having some kind of background check for busking, makes me frightened of the possibilities that could happen to our visitors and the reputation of our Boardwalk. If I said no to a background check for being a coach, I would not have been able to be one. If I had a criminal record, I would not be able to be one. Today's issues of kidnapping, assault, etc.. Are more common than ever before, so why is the freedom to make our Boardwalk safer such a tough issue? Isn't that what we all want? If that is so, than lets all really try to make this work and have the best, safest, and healthiest Boardwalk in America! I think we all can agree with that!

Jeff Albright

15 FEB 2015

Handwritten mark, possibly initials.

BOARDWALK TASK FORCE
C/O CITY MANAGER
CITY HALL
P.O. Box 158
OCEAN CITY, MD 21843-0158



RE: PUBLIC HEARING TESTIMONY

DEAR TASK FORCE MEMBERS:

AS FREE SPEECH PROPONENTS AND LONGTIME
USERS OF THE BOARDWALK, WE REGRET THAT WE
ARE UNABLE TO ATTEND YOUR 18 FEB PUBLIC HEARING.

THE RIGHT TO FREE EXPRESSION AND THE
RIGHT TO CLEAN AIR ARE NOT INCOMPATIBLE,
AND MUST NOT BE Pitted AGAINST ONE ANOTHER.

THE USE AND ENJOYMENT OF THE BOARDWALK
BY THE GENERAL PUBLIC HAS BEEN DIMINISHED
BY THE RELEASE OF HAZARDOUS MATERIALS, AND
RESULTING NOXIOUS FUMES, BY CERTAIN PERFORMERS.

THIS IS OUR MOST SERIOUS OBJECTION TO
THE STATUS QUO, IT APPEARS THE TOWN IS
FAILING IN ITS DUTY TO PROTECT THE PUBLIC
HEALTH, SAFETY AND THE GENERAL WELFARE.

THANK YOU FOR YOUR CONSIDERATION,

DOUGLAS ARMSTRONG + JOAN FLOYD
1104 N. THE WASHINGTON AVE.

EXHIBIT 8

Los Angeles Municipal Code

SEC. 42.15. VENDING AND EXCESSIVE NOISE ON BEACHES PROHIBITED.
(Amended by Ord. No. 181,963, Eff. 1/20/12.)

A. **Definitions.** For purposes of this Section, the following words or phrases shall have the following meanings:

1. **Board.** The Board of Recreation and Park Commissioners of the City of Los Angeles.
2. **Boardwalk.** The Boardwalk is the manmade promenade that runs parallel to the beach and is designated or referred to as "Ocean Front Walk" or just the "Boardwalk". The Boardwalk runs from the City of Santa Monica on the north to the City of El Segundo on the south. A map depicting the Boardwalk is available for inspection and copying at the Police Substation or at the Recreation Office.
3. **City.** The City of Los Angeles, a municipal corporation.
4. **Designated Space or Designated Spaces.** A Designated Space or Designated Spaces are the 205 areas on the Boardwalk designated by the City and located between Navy Street on the north and 17th Avenue on the south. A map depicting the Designated Spaces is available for inspection and copying at the Police Substation or at the Recreation Office.
5. **Department.** The Department of Recreation and Parks of the City of Los Angeles.
6. **Donation.** A gift; a voluntary act which is not required and does not require anything in return.
7. **Food.** Any type of edible substance or beverage.
8. **Goods or Merchandise.** Any items that are not food.
9. **Handcrafts.** Objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, and beading including objects such as jewelry, pottery, silver work, leather goods, and trinkets. Most Handcrafts have more than nominal utility apart from any communicative value they possess. Most commonly, Handcrafts do not communicate a message, idea, or concept to others, are often mass produced or produced with limited variation. Handcrafts do not include visual arts.
10. **Pagodas.** The shade structures and seating, plus the area within a ten foot radius around each of the shade structures and seating, located on the Boardwalk at Clubhouse Avenue, Breeze Avenue, Park Avenue, Sunset Avenue and Dudley Avenue. A map depicting the Pagodas is available for inspection and copying at the Police Substation or at the Recreation Office.
11. **Perform, Performing, Performance or Performances.** To engage in any of the following activities on public property: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, engaging in magic, creating visual art in its entirety, presenting or enacting a play, work of music, work of art, physical or mental

feat, or other constitutionally protected entertainment or form of expression. The terms Perform, Performing, Performance or Performances shall not include:

- (a) The application of substances to others' skin, including but not limited to, paints, dyes and inks;
- (b) The provision of personal services such as massage or hair weaving, cutting or styling;
- (c) the completion or other partial creation of visual art;
- (d) the creation of visual art which is mass produced or produced with limited variation; or
- (e) the creation of Handcrafts.

12. **Performer.** A Performer is a Person who Performs. Performer includes the employers, employees, and agents of a Performer. Indicia of being a performer include, but are not limited to, setting up performance equipment, staging or orienting the performance towards the public, performing in the same location for an extended period of time, performing in the public over multiple days, seeking voluntary contributions through passing around a hat or leaving open an instrument case or other receptacle, and soliciting donations after a performance.

13. **Person or Persons.** One or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

14. **Police Substation.** The Police Substation is the Los Angeles Police Department office building located at 17th Avenue and Ocean Front Walk.

15. **Program Rules.** Rules adopted by the Board pursuant to its Charter authority and made applicable to use of the public space on and adjacent to the Boardwalk. The Program Rules will be adopted at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, at least ten (10) days prior to implementation. The Program Rules, as may be amended from time-to-time by the Board, shall be available for inspection and copying at the Police Substation or at the Recreation Office.

16. **Pushcart.** Any mobile device that holds Food or Goods or Merchandise, as defined in this Subsection, and is used to vend.

17. **Recreation Area.** The area between Horizon and 20th Avenues that includes the Boardwalk, grassy areas, the Police Substation, which is co-located with an office of the City's Department of Recreation and Parks, Muscle Beach, paddle tennis courts, skate park, skate plaza and other recreational facilities. This does not include the area west of the Boardwalk immediately adjacent to this area. A map of the Recreation Area is available for inspection and copying at the Police Substation or at the Recreation Office.

18. **Recreation Office.** The Recreation Office is an office of the City's Department of Recreation and Parks that is physically co-located with the Police Substation at 17th Avenue and Ocean Front Walk.

19. **Sunset.** Sunset is the time at which the sun's disk descends below the western horizon. The precise moment of Sunset can be determined by reference to various, publicly available almanacs and newspapers of general circulation in Los Angeles.

20. **Vend or Vending.** To sell, offer for sale, expose or display for sale, solicit offers to purchase, or to barter Food, Goods or Merchandise, or services in any area from a stand, table, Pushcart, motor vehicle, bicycle, or by a Person with or without the use of any other device or other method of transportation, or to require someone to pay a fee or to set, negotiate, or establish a fee before providing Food, Goods or Merchandise, or services, even if characterized by the Vendor as a Donation.

21. **Vendor.** A Vendor is a Person who Vends. Vendor includes the employers, employees, and agents of a Vendor.

22. **Westside of the Boardwalk.** The area on the ocean-side of the Boardwalk. A map depicting the Westside of the Boardwalk is available for inspection and copying at the Police Substation or at the Recreation Office.

B. Findings and Purposes. The City Council of the City of Los Angeles finds and declares as follows:

1. The Boardwalk and Recreation Area constitute a major tourist attraction in the City, hosting approximately 16 million visitors annually. The Boardwalk and Recreation Area are limited spaces geographically, located in a narrow, linear City park that is bounded by the beach to the West and private property to the East. The total width of the Boardwalk is only ten feet in certain sections and only as wide as 50 feet in other limited areas. The space is further constrained by the fact the Boardwalk and Recreation Area serve as emergency ingress and egress routes.

2. Historically, visitors, including tourists, have been drawn to Venice beach because, the Boardwalk and Recreation Area served as a traditional public forum for performance and visual artists, as well as other free speech activity. Vendors of Food, Goods and Merchandise viewed the large crowds of visitors to the Boardwalk and Recreation Area as a pool of potential customers and Vending proliferated. As the numbers of commercial Vendors increased, the number of Performers and persons engaging in free speech activities decreased both because of the limited amount of space and because of the change in atmosphere from a vibrant center of art and expression to a commercial "flea market" atmosphere. Competing interests for space on the Boardwalk and Recreation Area intensified and physical altercations for space and disturbances of the peace resulted in law enforcement responses and arrests.

3. Unregulated Vending and Performances adversely affect the historic character of the Boardwalk, hamper rather than encourage a wide variety of performances, visual artists and other free speech activity, as well as jeopardize the public safety of visitors to the Boardwalk, resulting in an economic and cultural loss to the City. Therefore, the Boardwalk

CHAPTER IV PUBLIC WELFARE

requires reasonable time, place, and manner restrictions to retain its unique historic character as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the commercial life of the Boardwalk, and ensure the safety and enjoyment of residents, visitors, advocates, artists, 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 City.

4. Unregulated Vending and Performing harms the Boardwalk, and therefore must be regulated because:

(a) Tourists are deterred from visiting or shopping at the Boardwalk as they are constantly approached, solicited, and sometimes harassed by unregulated Vendors and Performers. Regulation is therefore necessary to manage the time, place, and manner of Vending on the Boardwalk, in order to ensure that tourists are not deterred from visiting or shopping at the Boardwalk;

(b) The amount of space on the Boardwalk that is available for performing and visual artists and for political advocacy is limited due to the size of the Boardwalk and the large crowds of visitors that the Boardwalk attracts. Due to the limited amount of space, unregulated Vending along the Boardwalk prevents many Persons from engaging in performance, art, advocacy or other expressive activities. The lack of regulations for Vending, Performing and noise has resulted in conflicting claims for the available spaces. Numerous altercations occurred, in competition for locations and amounts of space, during time periods in which the City lacked regulations for noise and a system for allocating available space for Vending and Performing. Frequently, the altercations became violent requiring law enforcement response to preserve the public peace. Persons wishing to secure spaces often arrive prior to dawn and create loud noise in setting up their displays, thereby disturbing the public peace, including the peace of the residents on and near the Boardwalk, and requiring a law enforcement response. Unregulated, the Boardwalk became a place where only the strongest and earliest arrivals could secure space to exercise their rights of free expression without threat of intimidation. Regulation is necessary, therefore, to manage the use of the limited space on the Boardwalk to prevent conflicting claims for the space and to allocate the limited space available fairly to all who desire to use it for lawful purposes;

(c) Tables, Pushcarts, stands, and certain equipment of Vendors and Performers impede the orderly movement of pedestrian traffic along the narrow Boardwalk and may make the Boardwalk unsafe for pedestrians by limiting the City's ability to effect crowd management and control. Certain equipment of Vendors and Performers contributes to visual clutter and blight, especially when it impacts the ability of Boardwalk visitors to see the Pacific Ocean. Regulating the use of equipment by Vendors and Performers therefore is necessary to manage the orderly movement of pedestrian traffic. Regulation also is necessary to avoid injuries to pedestrians as well as ensure the existence of emergency and non-emergency ingress and egress between the beach and the Boardwalk;

(d) The Vendors, Performers and their equipment impede the ingress and egress of emergency and public safety vehicles by creating physical obstacles to emergency response and administration of aid to those in need of immediate medical attention

CHAPTER IV PUBLIC WELFARE

and to victims of criminal activity. Regulation is therefore necessary to ensure that Vendors, Performers and their equipment do not interfere with emergency response vehicles that provide assistance to individuals with medical needs and victims of criminal activity;

(e) Unregulated Vending has resulted in the sale of stolen, defective or counterfeit merchandise. Regulation therefore is necessary to protect the public and the Boardwalk commercial life;

(f) Unregulated Vending of personal services has resulted in activities that are illegal and harmful to human health, including the offering of services by unlicensed Vendors of services for which a license is required by the State of California, physical assaults and the application of toxic chemicals to Persons;

(g) Unregulated Vending causes visual clutter/blight along the Boardwalk, impedes views of the beach and the Pacific Ocean, and threatens the City's ability to attract tourists and preserve businesses along the Boardwalk. Regulation therefore is necessary to manage the number of Vendors, the size of their equipment and displays, and the location of Vending activity;

(h) Unregulated Vending creates unnecessary, excessive and annoying noise on the Boardwalk, is detrimental to the public health, welfare and safety and 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 at the Boardwalk; and

(i) The Recreation Area is a site that is uniquely suitable to and frequently used for events that require pre-planning and advanced notice. The Recreation Area is the location of the Police Substation where vehicles require the ability for unobstructed ingress and egress. Due to the size, shape, and physical attributes of the Recreation Area (including a skate park and plaza, paddle tennis courts and exercise equipment), it is also a site uniquely suitable to and used by many Persons for skateboarding, paddle tennis, and other sports and exercise. The Recreation Area is the home of historic "Muscle Beach", a popular tourist attraction. Muscle Beach is world renowned as home of physical fitness advocates and body builders, including Jack La Lanne (considered to be the father of the modern fitness movement), Arnold Schwarzenegger, Franco Columbo and Dave Draper.

C. Beach Vending Prohibition. Except as specifically allowed in this Section, no Person shall engage in Vending upon any public beach lands or properties adjoining the waterfront of the Pacific Ocean, or upon any immediately adjacent Boardwalk, sidewalk or public way between the southerly boundary of the City of Santa Monica and the northerly boundary of the City of El Segundo and between the northwesterly boundary of the City of Santa Monica and the northwesterly boundary of the City of Los Angeles.

D. Vending and Performing on Designated Spaces. (Amended by Ord. No. 183,170, Eff. 9/15/14.) To address the findings and purposes set forth in this Section, the City has created reasonable time, place, and manner restrictions on Vending and noise, as well as to facilitate Performing. To preserve the Boardwalk's rich history of fostering new artists, performance and

other free speech activity, the City has divided the available space on the Boardwalk into 205 areas, known as Designated Spaces, where:

1. Persons can engage in traditional expressive speech and petitioning activities, and can Vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches and/or buttons.
2. Persons can Vend the following items, which have been created, written or composed by the Vendor or Performer: books, audio, video or other recordings of their performances, paintings, photographs, prints, sculptures or any other item that is inherently communicative and is of nominal value or utility apart from its communication.
3. Although an item may have some expressive purpose, it will be deemed to have more than nominal utility apart from its communication if it has a common and dominant non-expressive purpose. Examples of items that have more than nominal utility apart from their communication and thus are subject to the Vending ban under the provisions of this Section, include, but are not limited to, the following: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, crystals, lotions, candles, jewelry, toys and stuffed animals.
4. Vendors may not display items that may not be Vended pursuant to this Subsection.
5. Vendors may not provide free of charge any item that may not be Vended pursuant to this Subsection if the purchase of an item that may be lawfully Vended pursuant to this Subsection is a condition of receiving the free item.
6. Performers can Perform.
7. Any Vendor conducting lawful Vending under Subsections D.1. and D.2., above, must comply with applicable tax and licensing requirements.

E. Allocation and Use of Designated Spaces. The City's Board of Recreation and Parks Commissioners shall designate a total of 205 spaces on the Boardwalk, referred to as the "Designated Spaces". The Designated Spaces will be available for use in accordance with a first-come, first-served system or any other legally permissible allocation system adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, posted at the Recreation Office for at least ten (10) days prior to implementation.

The 205 Designated Spaces shall be made available for the activities described in Subsection D. above. Five of the Designated Spaces shall be double-sized, large act spaces for Performers whose number of Performers plus audience can be anticipated to exceed 25 Persons. Two of the regular-sized Designated Spaces shall be made available for Persons engaging in any activity that is described in Subsection D. and who are predominantly giving away Food. The remainder of the regular-sized, Designated Spaces shall be made available for Persons engaging in any exempt activity described in Subsection D.

Persons using the 205 Designated Spaces are subject to, and shall comply with, the following restrictions and the Program Rules adopted by the Board:

CHAPTER IV PUBLIC WELFARE

1. The five double-sized, large act Performer spaces historically have been used by Performers (such as acrobats) whose performances require more space than is available in a single-sized, Designated Space, and have been used by Performers who attract large crowds due to the nature of their performances. The five, double-sized, large act Performer spaces are the only spaces able to safely accommodate large scale performances or a large audience and, therefore, in order to facilitate a variety of Performances in these double-sized spaces, the Performer spaces are subject to a rotation requirement, whereby each Performer using one of the five Performer spaces shall relinquish the space on the hour, every hour, whenever another Performer is waiting to use the Performer space in which the Performer is Performing.

2. No Person shall Vend any item in a Designated Space, except as expressly authorized by Subsection D.

3. No Person shall place or allow anything in any Designated Space to extend beyond the boundaries of the Designated Space nor place anything adjacent to the Designated Space nor obstruct or impede the access areas between the Designated Spaces.

4. No Person shall Vend in, Perform in, or place or allow any item to extend into a designated emergency ingress and egress area. A map depicting the emergency ingress and egress areas is available for inspection and copying at the Police Substation or at the Recreation Office.

5. The City desires to balance the goal of avoiding visual clutter and blight against the need of Performers and Vendors exempt pursuant to Subsection D., above, to have shade from the sun. Additionally, the City desires to balance the goal of avoiding visual clutter and blight against the desire of Performers and Vendors exempt pursuant to Subsection D., above to use equipment common to exempted Performing and Vending activities. Accordingly, the following rules relating to shade, Performing and Vending equipment: are adopted as follows: No Person shall place or allow any item (except an umbrella, sun shade, easel, display board or microphone stand) exceeding four feet above ground in any Designated Space; nor shall any Person cause or allow a Designated Space to be enclosed. An umbrella or sun shade shall not exceed 8 feet above ground and shall be open on all sides. An easel, display board or microphone stand shall not exceed 6 feet in height. Persons shall not hang objects of any nature on or from any umbrella, sun shade, easel or display board.

6. No Person occupying a Designated Space shall leave that Designated Space for a period longer than 45 consecutive minutes without first removing all items from the Designated Space.

7. No Person shall occupy more than one single regular-sized or double-sized Designated Space at any given time, nor shall any Person solicit another Person to obtain or occupy a Designated Space on his or her behalf.

8. No Person shall purchase, sell, barter or exchange any Designated Space with any other Person.

9. No Person shall set up or set down items in, take down items from or block, or attempt to reserve a Designated Space between Sunset and 9:00 a.m.

10. Any umbrella used in connection with the activities authorized in the Designated Spaces must be adequately secured in an upright position with a diameter no greater than 8 feet.

11. Designated Spaces must be kept clean and free of litter and debris. No permanent markings shall be made in any Designated Space. Any temporary marking made in any Designated Space must be removed from the Designated Space when the Person using the Designated Space vacates the Designated Space or by Sunset, whichever is earlier.

12. No open flames combustible fuel or gasoline-fueled generators are allowed in any Designated Space. Electric cords may not be connected outside the assigned space or to any City or private power source.

F. Special Rules for Other Areas of the Boardwalk.

1. Areas Outside of the Designated Spaces, Pagodas, and Recreation Area.

(a) **Areas where use of equipment is prohibited.** The activities described in Subsection D. may occur in all areas covered by this Section outside the Designated Spaces, Pagodas, and Recreation Area, provided that no Person may set up a display table, easel, stand, equipment or other furniture, use a Pushcart or other vehicle or place any item on the property defined in Subsection C. except as provided in Paragraph (b) of this Subdivision.

(b) **Areas where limited use of equipment is permitted.** The activities described in Subsection D., but not including Vending, may occur on the Westside of the Boardwalk outside the Designated Spaces, Pagodas, Recreation Area and other areas designed as access points for or constitute routes for emergency ingress and egress. In connection with permissible activities in the area on the Westside of the Boardwalk, outside the Designated Spaces, Pagodas, Recreation Area and other areas designated for emergency ingress and egress, a Person may set up a display table, easel, stand, equipment or other furniture, a Pushcart or other vehicle, or place an item on the ground in the areas where limited use of equipment is permitted, subject to reasonable size and height restrictions set forth in paragraph E.5., herein, provided the equipment or the activity associated with the equipment does not materially impede or obstruct pedestrian or vehicular traffic or areas designed for emergency ingress and egress. Nothing in this paragraph shall be construed to allow a person to use or set up equipment in connection with Vending.

(c) The areas in which use of equipment is prohibited and areas in which limited use of equipment is permitted is available for inspection and copying at Police Substation or Recreation Office.

2. The Recreation Area.

(a) The Recreation Area is a limited space containing a confluence of public safety ingress and egress routes, and at which pre-planned events, recreation activities and tourism occur. The City's Board of Recreation and Parks Commissioners may allocate use of the Recreation Area through the adoption of Program Rules detailing an advance reservation system or any other legally

CHAPTER IV PUBLIC WELFARE

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(c) The areas in which use of equipment is prohibited and areas in which limited use of equipment is permitted is available for inspection and copying at Police Substation or Recreation Office.

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(a) The Recreation Area is a limited space containing a confluence of public safety ingress and egress routes, and at which pre-planned events, recreation activities and tourism occur. The City's Board of Recreation and Parks Commissioners may allocate use of the Recreation Area through the adoption of Program Rules detailing an advance reservation system or any other legally

permissible allocation system, and the advance reservation system or other legally permissible allocation system contained in the Program Rules will be adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, and made effective after reasonable public notice by posting at the Recreation Office for at least ten (10) days prior to implementation. A copy of the Program Rules shall be available for inspection and copying at the Police Substation or the Recreation Office.

(b) No Vending, and no display tables, easels, stands, equipment, Pushcarts or other vehicles, or structures shall be allowed in the Recreation Area except as may be expressly authorized by the Board in connection with the Board's pre-approval of the use of the Recreation Area.

(c) No Person shall use the Recreation Area or any part of the Recreation Area while the Recreation Area or that part of the Recreation Area has been reserved, set aside, is being used, set up, maintained or designed for a specific recreational purpose, park purpose or event authorized by the City through the Department or Board. When the City, through the Department or Board, has reserved, intends to use, set up, maintain or designate the Recreation Area or any part of the Recreation Area for a specific recreational purpose, park purpose or event, the Department will make available for inspection and copying at the Police Substation or Recreation Office information describing the nature of the authorized park purpose or event, the location of the park purpose or event and the times during which the park purpose or event will take place.

G. Use of City Property for Vending, Performing, or Display Prohibited. No Person shall use or obstruct access to any City-owned or maintained property or equipment, including, but not limited to, street furniture, benches, planters, trash receptacles, Pagodas or other structures or equipment installed on public property, for Vending, Performing, or display of anything whatsoever.

H. Noise Regulation for all Property on or Abutting the Boardwalk.

1. No Person whether on the Boardwalk or on private or public property abutting the Boardwalk shall create any noise, or allow the creation of any noise, which causes the noise level to exceed the following Lmax levels between 9:00 a.m. and Sunset:

(a) 75 dBA, when measured at a minimum distance of 25 feet from the source of the noise; or,

(b) 96 dBA, when measured at a minimum distance of one foot from the source of the noise.

When Lmax levels are measured for noise emanating from a building located on private property adjacent to the Boardwalk, the measurement shall be taken from the property line dividing the private property and the Boardwalk.

2. Nothing in this Section shall be construed as prohibiting the City from enforcing other provisions of this Code regulating noise and sound levels. At all times, the noise and sound provisions of Chapter 11 of the Los Angeles Municipal Code, Articles 1 through 5, inclusive, and Los Angeles Municipal Code Sections 63.44 B.6., 41.42, 41.57, 53.63 shall

apply.

3. No Person shall interfere with or resist the taking of any noise measurement authorized by this Section.

I. Violations. (Amended by Ord. 183,170, Eff. 9/15/14.) Any Person violating a provision of this Section shall be subject to the following penalties:

1. **First violation.** A first violation of this Section shall be an infraction punishable by a fine in the amount of \$100.

2. **Second and subsequent violations.** A second violation and all subsequent violations shall be subject to the provisions of Section 11.00 of the Los Angeles Municipal Code, including prosecution as an infraction punishable by a fine in the amount of \$250, or prosecution as a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

3. The following constitute violations for purposes of this Subsection: A conviction for violation of this Section, a conviction under California Penal Code Section 853.7 for failure to appear in court to contest a citation for violation of this Section, or a forfeiture of bail.

4. Nothing in this Section shall be construed as prohibiting the City from enforcing any and all other provisions of this Code or other applicable laws. At all times, Los Angeles Municipal Code Section 63.44, which regulates the use of park and recreational facilities, shall apply.

J. Other Applicable Opening and Closing Hours. Nothing in this Section amends or extends the opening or closing hours otherwise established by law for any area subject to this Section.

K. Posted Notice. The City shall post signs providing notice of the existence of rules for the allocation and use of the Designated Spaces, Recreation Area and Boardwalk areas near the entrances to the Designated Spaces and the Recreation Area. A complete copy of this Section shall be available for inspection and copying at the Police Substation or at the Recreation Office.

L. Severability. If any portion, subsection, sentence, clause or phrase of this Section 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 Section 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.

EXHIBIT 9

~~DRAFT~~

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**REPORT OF THE
TOWN OF OCEAN CITY, MARYLAND
TASK FORCE ON BOARDWALK REGULATION**

DRAFT
~~March 18~~April 13, 2015

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I. INTRODUCTION

A. The Issues That The Task Force Is Required To Study

The Task Force on Boardwalk Regulation (the “Task Force”) was created on January 20, 2015 by unanimous vote of the City Council of Ocean City which adopted Resolution 2015-1 directing that a task force be established and that it be composed of no fewer than five members, including at least one street performer, each to be appointed by the Mayor and approved by the City Council. The Resolution directed the Task Force to hold public hearings, study and make recommendations in connection with:

- (1) the impact of recent court rulings addressing regulation of the Boardwalk;
- (2) steps that the Town of Ocean City has taken to satisfy those court rulings;
- (3) issues that have arisen as a result of the Town’s implementation of those court rulings;
- (4) the current state of applicable law;
- (5) any revisions to the Town Code needed to address issues relating to the regulation of the Boardwalk.

The Resolution directed the Task Force to promptly report its findings and recommendations to the Mayor and City Council.

B. The Composition Of The Task Force

The Mayor appointed the following persons as members of the Task Force:

- (1) Greg Shockley, Chairman of the Task Force, owner of Shenanigan’s Restaurant and Chair of the Maryland Tourism Committee;
- (2) Mark Chase, Artist and Street Performer;
- (3) Lee Gerachis, Owner of Malibu’s Surf Shop;

- (4) Frank Knight, Board Member of the Ocean City Development Corporation;
- (5) Bob Rothermel, Member of the Ocean City Downtown Association.

The City Council approved these appointments, and the Town government provided staff for the Task Force.

II. THE TASK FORCE’S MEETINGS AND INVESTIGATIONS

The following is a description of the meetings held by the Task Force and the scope of its investigation. This description has been taken largely from the transcripts of the Task Force meetings which are attached as Exhibit 1.

A. Session 1: Thursday, February 5, 2015 1:00 PM

The Task Force members were introduced. The Chairman made some introductory remarks regarding the recent history of Boardwalk regulation. He recounted that in 2011 the City Council adopted an ordinance that (1) required all street vendors and performers to confine their activities to the street ends, (2) required all street performers to obtain a license from the Town, and (3) banned all sales by street performers and vendors. That ordinance was challenged in federal district court. The lead plaintiff in that case was Mark Chase, a Task Force member. The district court found that some provisions of the ordinance were necessary to protect public health and safety, while other provisions unnecessarily and impermissibly curtailed First Amendment rights to free expression.

The district court issued an order enjoining enforcement of some portions of the ordinance. (Included as Exhibit 2 is a copy of the district court Order issued, labeled “Preliminary Injunction,” another document labeled “Consent Decree,” and a copy of the

ordinance itself, which is codified in Section 62 of the Code of the Town of Ocean City. Exhibit 3 is a copy of the district court memorandum opinion explaining its reasoning.)

In essence, the district court upheld that portion of the ordinance that restricted street performers and street vendors to certain parts of the Boardwalk (the street ends, with the exception of the end of North N. Division Street, from which vendors and performers were excluded completely). The district court, however, struck down the license requirement and ruled that the Town could not prohibit the sale of “expressive materials” by street vendors and performers.

Task Force members initially discussed issues created by the Town’s attempt to enforce the ordinance as modified by the district court’s ruling. For example, police officers charged with enforcing the law often had to decide (and sometimes had difficulty deciding) whether any given item sold on the Boardwalk was protected “expressive material” or if a person was engaged in permitted expressive activity.

At the conclusion of this discussion, the Task Force identified the following issues it would consider:

1. The effects of street performers and vendors on traffic circulation and the use, safety and enjoyment of the Boardwalk.
2. The need for additional regulation of activities on the Boardwalk to address health and safety, noise, and emergency access issues and the nature and scope of such regulation.

The Task Force then identified the following witnesses from whom it would request testimony:

1. Lt. Mark Pacini, Ocean City Police Department;
2. Shannon Tippett, Owner, Mug & Mallet Restaurant;

3. Bill Gibbs, Owner, Dough Rollers Restaurant and Breakers Hotel;
4. Vicki Barrett, Owner, An Inn on the Ocean;
5. Jackie Ball, Owner, Park Place Hotel and Conner's Beach Café;
6. Don Timmons, Dumser's Ice Cream;
7. Yadigar Karsli, Owner, Love's Lemonade;
8. Glenn Irwin, Director, Ocean City Development Corp.;
9. Hale Harrison, Harrison Group Resort Hotels and Restaurants;
10. Joseph L. ~~Kro~~ ArtKroart, III, Ocean Gallery;
11. Todd Ferrante, Owner, Park Place Jewelers;
12. Bruce Krasner, Owner, T-Shirt Factory Stores;
13. Lt. Ward Kovacs, Ocean City Police Department;
14. Carrie Lynch, Eastern Regional Director, ASSE International Inc./Aspire Worldwide.

In addition, the Task Force Chairman ruled that the Task Force would hear testimony from any interested person and that written testimony could be submitted for the Task Force's consideration.

B. Session 2: Monday, February 9, 2015 6:00 pm

The Task Force heard testimony from 17 witnesses, who identified diverse issues and proposed solutions. The testimony for each witness is summarized below.

(1) Lt. Mark Pacini

Lt. Pacini has worked in the Ocean City Police Department on various patrols for approximately 25 years. (February 9, 2015 Hearing Tr. at 7.) Since 1990, he has been assigned as the Watch Commander responsible for Ocean City's largest patrol shift

during the summer season (*Id.*) Lt. Pacini expressed his desire to make the Boardwalk a safer place, while remaining cognizant of the Town's public reputation given the 24/7 social media and trending news cycles. (*Id.* at 7-8.) Lt. Pacini brought a PowerPoint presentation with him to aid in his testimony, and submitted it as an accompanying memorandum for the Task Force. (A copy of these materials is attached as Exhibit 4.)

Lt. Pacini identified a number of issues that the Ocean City Police Department currently faces. First, he noted that the current system does not allow police to gauge or control the number of performers or crowd sizes on the Boardwalk. (*Id.* at 11.) Second, Lt. Pacini and his officers have had a difficult time implementing the district court's opinion from *Chase v. Town of Ocean City, Maryland*, 825 F. Supp. 2d 599 (D. Md. 2011), in that on many occasions they have had difficulty determining what items being sold and activities conducted on the Boardwalk are constitutionally protected. (*Id.* at 12-13.) Lt. Pacini described the system in place to address these concerns post-*Chase*, and it consisted of frequent communication between Lt. Pacini and ~~Town Attorney~~City Solicitor Guy Ayres as issues arose. Mr. Ayres would conduct research and make a "ruling" on whether the activities by Boardwalk vendors and performers were allowed. (*Id.* at 14-15.) Lt. Pacini also created an educational flier that listed certain protected and unprotected items, and he handed out this flier to new and old performers alike in an attempt to streamline the process. (*Id.* at 15.)

Despite these efforts, Lt. Pacini routinely encountered items or materials which fell into what he termed a "gray area" with respect to their constitutional protection. (*Id.* at 16.) Lt. Pacini remarked that he would receive emails or other communication on a daily basis about what is protected and what is not. (*Id.*) Lt. Pacini acknowledged that he spends quite a bit of time and effort on these issues by himself. (*Id.* at 19.) The reason he handles this process by himself is so that other officers are able to conduct their

regular duties. Overall, Lt. Pacini recognized that post-*Chase*, the Boardwalk ordinances leave far too much gray area for viable and effective enforcement of the current laws. (*Id.* at 31-32.) As such, he brought to light a number of additional issues to be addressed, which are discussed below.

First, Lt. Pacini expressly requested that the Task Force consider a thorough and clear definition of what is a “performer,” what constitutes a “performance,” and what “expressive material” is permitted on the Boardwalk. (*Id.* at 28, 32.)

Lt. Pacini explained that he and his department discovered last year that the current state of the Boardwalk has led to merchants violating Town ordinances and conducting “street performing businesses” on their own. (*Id.* at 19-20.) One example of such [an](#) activity is merchants hiring international students to work as henna tattoo artists on the Boardwalk, in apparent violation of the students’ J-1 visa restrictions. (*Id.* at 19, 25-26, 34.) In response to this situation, Lt. Pacini has attempted to cite the businesses, or even go after their business licenses, but the cumbersome administrative process has kept him from effectively pursuing this option. (*Id.* at 35-36.)

The reason some merchants are inclined to take such measures to conduct these “street performing businesses,” stems from the tension between business owners and street performers and sellers of expressive material. Lt. Pacini described these tensions and shared the story of the performer who set up his henna tattoo stand directly across from a Boardwalk store that sold henna tattoos inside. (*Id.* at 36.) The performer’s actions resulted in an altercation between performer and merchant where the business owner threatened to kill the performer if he would not move. (*Id.*)

Lt. Pacini requested the Task Force to investigate and address whether the following conduct can be constitutionally regulated or banned: (1) activity that requires

the touching of others, such as face painting, henna tattooing, hair feathering, or hair braiding, (2) performers' use of gas generators, spray painting materials, LED lights, and benches and walls along the Boardwalk, and (3) the noise levels of performers and their amplifiers. (*Id.* at 22, 24-25, 27-28.) Furthermore, Lt. Pacini expressed his concerns about performers erecting stages/platforms or roping off areas for their performances, performers/street merchants leaving unattended materials and possessions for extended periods of time on the Boardwalk, and of the Town not knowing the identity of the costume wearing street performers whose faces are hidden from the public. (*Id.* at 21, 25, 26.) A final concern of Lt. Pacini was whether the Town needs to regulate the age of the performers by requiring underage performers to obtain parental consent and/or supervision prior to performing. Similarly, he observed that some performers invited children to participate in their acts with them and wondered whether the Town should prevent performers from interacting with minors, without first getting consent from the minors' parents. (*Id.* at 22, 26.)

(2) Lt. Ward Kovacs

Lt. Kovacs is a member of the Ocean City Beach Patrol who has worked in Ocean City for 33 years. (*Id.* at 38.) The majority of his testimony focused on the issues he has experienced with respect to Dorchester Street. (*Id.* at 39.) Since 1992, Dorchester Street has been the primary access point for the emergency response units to the beach. (*Id.*) Lt. Kovacs informed the Task Force that the Beach Patrol is located by Dorchester Street and the Boardwalk, and on average, they conduct anywhere from twenty to forty Boardwalk crossings per day at Dorchester Street. (*Id.* at 39-40.) This equates to roughly three thousand crossings at that location each season. (*Id.*) These crossings are made by the department's ATVs, SUVs, and pickup trucks. (*Id.* at 39.) During these crossings, Lt. Kovacs stated that the officers encountered performers roughly one-third of the time.

(*Id.* at 41.) While the performers blocking the pathway for the crossings is generally a mild inconvenience to the officers bringing materials to the beach, there have been times when an officer's response to a life-threatening situation has been delayed. (*Id.*)

In particular, Lt. Kovacs described occasions when emergency vehicles were delayed in responding to potential drownings. (*Id.* at 43-44.) On one occasion, a Sergeant observed a swimmer face down in the water and initiated a response. (*Id.* at 43.) When Lt. Kovacs attempted to respond with an emergency vehicle crossing Dorchester Street, a large crowd by a performer delayed Lt. Kovacs in his attempt to cross the Boardwalk. (*Id.* at 43-44.) As a result, a Sergeant was left by himself in the heavy surf attempting to aid the unconscious drowning victim. (*Id.* at 44.) A similar situation arose later, but then it was Lt. Kovacs who was left alone attempting to save a swimmer as the Sergeant was delayed in attempting to cross Dorchester Street to aid him. (*Id.*)

Given these events and the life-threatening risks created by congestion at Dorchester Street, Lt. Kovacs requested the Task Force to consider prohibiting performances on the street end of Dorchester Street. (*Id.* at 44-45.) Prohibiting performances at this street end would afford emergency response vehicles the safest and quickest access to the beach without unnecessarily delaying their responses. (*Id.* at 46.) To support his position, Lt. Kovacs also provided photographs of the type of congestion that Town officers and police are encountering in attempting to cross the Boardwalk. (These photographs are attached collectively as Exhibit 5.)

Lt. Kovacs explained that, while he understood the need for and value of street performers, in the interest of safety, Dorchester Street may not be an appropriate place for such activity. (*Id.* at 47.) Lt. Kovacs has witnessed times where street performers have

made eye contact with department officials attempting to cross Dorchester Street and refused to move while claiming that they had a right to be there. (*Id.* at 42.) Lt. Kovacs stated that street performers sometimes impede emergency vehicles even when they do not have a large crowd. (*Id.* at 51.) Many times, performers set up a booth or stand, or have speakers with chords that require time to pack up and move before the response unit can cross the street. (*Id.*) With that in mind, Lt. Kovacs requested that the Task Force consider a proscription of all street performances on Dorchester Street.

(3) Glenn Irwin

Mr. Irwin is the Executive Director of the Ocean City Development Corporation. (*Id.* at 55.) Last year, Mr. Irwin saw more street performers in Ocean City than he had ever seen in his 15 years in the Town. (*Id.* at 56.) He believed that the large number of performers has caused the Boardwalk to reach its saturation point. (*Id.*) He has also witnessed performers setting up in the early morning hours to lay claim to their spots or ~~reperoping~~ off certain areas. (*Id.* at 58.) These performers have become territorial and increasingly focused on capturing and retaining what they perceive to be the prime locations on the Boardwalk. (*Id.* at 58-59.) At the same time, he has received complaints from merchants who are selling the same goods as some of the performers, but have the added expenses of rent and other licensing requirements. (*Id.* at 57.)

To solve a number of these problems, Mr. Irwin proposed a rotation of the performers through a lottery system. (*Id.* at 59.) The lottery system would randomly and fairly spread out the performers and alleviate the repetitive nature of some of the performances. (*Id.*) The spaces designated using this lottery system would also be drawn in such a way as to prevent the blockage of emergency access points to the beach and other entrance ramps to the Boardwalk. (*Id.*)

(4) Joseph Kroart, III

Mr. Kroart works at the “Ocean Gallery” art studio that is owned by his father. (*Id.* at 62.) Mr. Kroart’s main desires are to ensure (1) the health of the tourism economy in Ocean City, and (2) that the visitors are safe. (*Id.* at 64-65.) Mr. Kroart recognized the value of street performers to the experience of Ocean City tourists, but cautioned the Task Force that visitors routinely think of the Boardwalk as a single representative entity of the Town, meaning that they believe all businesses and performers alike are employees of the Town. (*Id.* at 66-67.) To that end, Mr. Kroart wanted the liability of the performers versus the Town to be addressed. (*Id.* at 67.)

Mr. Kroart declared that the Town has a compelling interest in protecting its tax base by ensuring that the merchants who pay for prime real estate on the Boardwalk are viable. (*Id.* at 71.) This economic interest, in Mr. Kroart’s opinion, bolsters any argument for regulation of the street performers. (*Id.*)

In terms of regulation, Mr. Kroart believed that there should be an identification requirement for the costumed characters. (*Id.* at 68.) Mr. Kroart was also in favor of regulating body paint applied to the skin. (*Id.*) Finally, he suggested that performers be required to carry insurance in order to mitigate any potential harm. (*Id.* at 70.)

(5) Vicki Barrett

Ms. Barrett is the owner of “An Inn on the Ocean,” and also works with the Ocean City Development Corporation. (*Id.* at 73.) Ms. Barrett acknowledged the importance and value of street performers, but also understood that merchants are losing money due to the current system in place. (*Id.* at 74-75.) One merchant informed Ms. Barrett that he lost up to \$30,000 last summer alone. (*Id.* at 75.) She stated that a lot of the angst from merchants results from the fact that they are required to pay rent, licensing fees, display

fees, taxes, and adhere to a number of regulations to which street performers do not. (*Id.* at 75-76.) Ms. Barrett also identified safety issues as a concern of hers by virtue of not knowing the identities of the costumed characters whose faces are covered. (*Id.* at 76.)

Ms. Barrett proposed a system ~~rotating~~to rotate the performers so as to prevent the same acts from performing in front of the same stores each day. (*Id.* at 77-78.) Ms. Barrett expressed that some of her customers have complained about this very fact. (*Id.*) Additionally, in the interest of public safety, Ms. Barrett recommended a registration system so that the identities of all performers are known. (*Id.* at 78.)

(6) Kitty Wyatt

Ms. Wyatt owns “Sassy Beachwear,” located on the corner of Dorchester Street and the Boardwalk. (*Id.* at 82.) Ms. Wyatt has had both positive and negative experiences with performers on the Boardwalk. While some performers have been respectful of her requests to move to keep them from blocking the entrance to her doors, others have refused to give up spaces because they claim that have a right to be there. (*Id.* at 82-83.) This results in business being taken away from her store. (*Id.* at 83.) Her business is affected because the performer’s crowds block the entrance to her store, and she has received complaints from customers that they were unable to find her store because of these crowds. (*Id.* at 86-87.) Ms. Wyatt has also witnessed the same thing happen in front of the Candy Kitchen. (*Id.* at 87.)

Ms. Wyatt has also witnessed a performer refuse to move when a lifeguard vehicle tried to return from the beach. (*Id.*) Ms. Wyatt has also witnessed performers get into arguments with one another, directly across the Boardwalk in front of her store. (*Id.* at 83-84.)

(7) Yesim Karaman

Ms. Karaman is a Town employee whose family owns the “Golden Plate” restaurant at First Street on the Boardwalk. (*Id.* at 89.) Ms. Karaman recognized that many merchants are upset about paying rent and taxes while the performers do not have to do so, but she also understood that protecting First Amendment free expression is important. (*Id.* at 89-90.) The goal of Ms. Karaman’s family is to make money to pay rent, take care of the family, and help to maintain the family-friendly environment of Ocean City. (*Id.* at 90.)

Ms. Karaman, however, has experienced and witnessed a number of problems due to the street performers, which she shared with the Task Force. Specifically, performers have cursed at Ms. Karaman after she asked them to turn their music down. (*Id.* at 91.) Ms. Karaman, her mother, and her sister have suffered headaches from the spray paint fumes from the Boardwalk, and her mother also suffers from asthma, which is exacerbated due to the fumes. (*Id.*) Additionally, she has witnessed store fronts being blocked continuously due to the large crowds, and she vividly recalled a situation where paramedics could not respond to an emergency call on the beach because of the setup of the street performer on the Boardwalk. (*Id.* at 92-93.)

In response to these issues, Ms. Karaman proposed a rotation of the street performers that also limited their performance areas to certain designated spaces on the Boardwalk. (*Id.* at 90, 93.)

(8) Christine Lieb

Ms. Lieb is an Ocean City resident and a “Boardwalker,” who walks the boards approximately 280 to 300 days a year. (*Id.* at 94.) She wanted to give the Task Force her perspective as a citizen, as opposed to a performer or merchant. (*Id.*) In her opinion,

restaurants and stores are losing business due to the fact that certain performers are working in front of their locations. (*Id.*) Ms. Lieb also spoke of the overcrowding that has prevented her and her husband from walking the Boardwalk as they have in the past, forcing them to inch their way through the crowds. (*Id.* at 95.) Additionally, Ms. Lieb and her husband have also been antagonized by performers when they have to walk through their circle shows.

Ms. Lieb also reported witnessing performers getting into public arguments with one another. (*Id.* at 94-95.) On one occasion, a young banjoist and a young guitarist had a heated confrontation with a lesser talented violinist who was verbally abusive to the two younger musicians until they eventually left. (*Id.*)

(9) Arlo Hemphill

Mr. Hemphill is a resident of Ocean City whose family owns a number of stores on the Boardwalk. (*Id.* at 96.) Mr. Hemphill spoke in favor of rotating performers, and perhaps even having spaces highlighting the most talented performers that draw the largest crowd. (*Id.* at 97.) Mr. Hemphill also suggested developing the area around Sunset Park so that it may be seen as a desired venue for performers, similar to Mallory Square in Key West, Florida. (*Id.* at 98.)

(10) Brian McCarthy

Mr. McCarthy is a resident of Ocean City, who wanted to let the Task Force know that due to the large crowds gathered around the performers last year, he and his wife experienced the most difficult times walking the Boardwalk since they have been in Ocean City. (*Id.* at 98-99.) To address this, Mr. McCarthy proposed rotating the performers ~~to certain areas~~, which ~~provides~~would provide a variety of shows along the Boardwalk while freeing up space for Boardwalk pedestrians. (*Id.* at 99.)

(11) Michael Cantine

Mr. Cantine is the owner of “Fat Cats Airbrush,” a store on the Boardwalk where customers can purchase airbrushed paintings on articles of clothing like t-shirts and hats. (*Id.* at 100.) Mr. Cantine’s main frustration with the current state of street performers is that he, as a commercial store owner, is required to pay taxes, insurance, rent, and employee salaries, but the street performers are not. (*Id.* at 101.) Simply put, he did not believe the current state of the Boardwalk to be fair. (*Id.* at 105.) He has lost employees due to the ability of street performers to have a presence on the Boardwalk ~~to do~~ doing the same things that his store does, but without the same expenses. (*Id.*) In his estimation, there is too much gray area about what is considered “art”, and what is protected as “free speech,” and he would like a clear definition of what is protected and what is not. (*Id.* at 102-103.)

(12) Earl Cantine

Mr. Cantine is the owner of “Big Island Airbrush,” a store on the Boardwalk that offers the same goods and services as “Fat Cats Airbrush.” (*Id.* at 106.) Mr. Cantine discussed the health hazards of the henna products being used on the Boardwalk, and how ~~it is different~~ they differ from true henna paint. (*Id.* at 107.) Mr. Cantine also recognized that changes needed to be made due to the public safety hazards created by the blockage of emergency access roads. (*Id.*)

To address these concerns, Mr. Cantine proposed a lottery system with rotation of performers that promotes fairness while also relieving congestion on the Boardwalk. (*Id.* at 106.) Further, Mr. Cantine advocated for a permit process and/or a registration system that allowed the Town to know the identities of all performers. (*Id.*) Mr. Cantine also requested that the Task Force provide a clear definition of what constitutes a “performance,” and how that is different from what is considered “retail.” (*Id.* at 107.)

Lastly, Mr. Cantine urged the Task Force to consider the Town's liability via the street performers and act appropriately to ensure the Town is covered on that front. (*Id.* at 106-107.)

(13) Anne Marie Constable

Ms. Constable is the Director of the J-1 Exchange Program in Ocean City. Ms. Constable expressed that the program is focused on the safety of the students and their ability to have a positive cultural experience in the United States. Nonetheless, Ms. Constable expressed her fear of the exploitation of these students at the hands of merchants on the Boardwalk. (*Id.* at 111.)

Ms. Constable advised that ~~a number of Boardwalk merchants have hired~~ visiting students ~~have been hired~~ to be costumed characters ~~by Boardwalk merchants~~ and ~~are paid them~~ under the table in cash. (*Id.* at 109-110.) Ms. Constable recognized that this type of activity is in violation of the students' J-1 visa restrictions. (*Id.*) Ms. Constable testified that on more than one occasion she has had to venture to the Boardwalk and physically remove students who are working on the Boardwalk in varying capacities. (*Id.* at 110-111.) She expressed a desire to prevent this from happening, and made herself available to the Task Force to help in any way that she can in order to ensure the safety of these students and keep them free of exploitation. (*Id.* at 111-112.)

(14) Randy Grimm

Mr. Grimm is a musician and performer who has spent many years visiting Ocean City with his family. (*Id.* at 117-118.) Mr. Grimm did not propose any specific solutions, but shared his stories highlighting the value of street performers, and what they contribute to the family-friendly atmosphere and environment of Ocean City. (*Id.* 118-120.)

In particular, Mr. Grimm shared the story of a child named Kevin, who suffers from Down syndrome. (*Id.* at 119.) On one day while Mr. Grimm was performing, Kevin stood and watched the performance quietly from nearby. (*Id.*) A short while later Kevin’s grandfather indicated that Kevin wanted to sing as Mr. Grimm continued to play music. (*Id.*) Mr. Grimm invited Kevin to stand next to him and do so, which Kevin did. (*Id.*) Kevin then sang boldly and proudly in a foreign language that Kevin’s own family was not familiar with, yet he drew the biggest crowd Mr. Grimm had received all season long. (*Id.*) At the end of the performance the crowd gave Kevin quite a few dollars in tips, which Kevin happily put in Mr. Grimm’s tip bucket. (*Id.*) Prior to leaving, Kevin’s family informed Mr. Grimm that watching Kevin sing with Mr. Grimm was the highlight of their vacation that year. (*Id.*) For Mr. Grimm, the point in sharing such a story is that street performers have a value to visitors of Ocean City, and while he understood that there are safety issues and problems arising due to street performers, he wanted to remind the Task Force that these performers are a valuable part of the Ocean City experience as well. (*Id.* at 120.)

(15) Dan Troiano

Mr. Troiano is the owner of “Dimensions,” a clothing, tattoo and piercing shop on the Boardwalk. (*Id.* at 120.) Mr. Troiano identified the obstruction of the free flow of pedestrian traffic and overcrowding as the main issues caused by the current state of street performers on the Boardwalk. (*Id.* at 121.) He has received complaints that visitors are unable to find his store due to the high volume of people on the Boardwalk in front of his store that block his entranceway while they watch the street performers. (*Id.* at 123.) Mr. Troiano also complained that the second floor of his store smells like spray paint, which affects his customers as they wait to receive tattoos or piercings. (*Id.* at 122.) While he did not expressly propose any solutions, Mr. Troiano appeared to agree

with Member Chase’s suggestion to move all performers to the east side of the Boardwalk to prevent the above-described situations from happening. (*Id.* at 124-125.)

(16) Bruce Leiner

Mr. Leiner is the owner of the “Candy Kitchen” stores in Ocean City. (*Id.* at 126.) Mr. Leiner has lived in Ocean City for 45 years, and he recognized that Ocean City is a family town, and as such, safety and keeping the family-friendly environment should be the primary concerns for the Town officials. (*Id.*) With that in mind, Mr. Leiner proposed that performers be prohibited from roping off areas and blocking entrances or ramps to buildings and stores. (*Id.*)

To best achieve these goals, Mr. Leiner proposed having performers set up and perform exclusively in designated spaces on the east side of the Boardwalk. (*Id.* at 127.) These spaces would be made in consideration of a minimum distance from the fire hydrants already on the Boardwalk. (*Id.* at 127.) Mr. Leiner also advocated for a lottery and rotation system with regards to performers and these spaces. (*Id.* at 128.) In Mr. Leiner’s view, a rotation of the performers and lottery is a fair and necessary way to protect an individual’s right to freedom of speech, while also solving the problems that currently affect the Boardwalk. (*Id.*)

(17) Bill Champion

Mr. Champion has been a performer on the Boardwalk for decades. (*Id.* at 130.) Today, he specializes in making balloon animals, although over the years he has also performed as a clown, ventriloquist and magician. (*Id.*) Mr. Champion believed the most glaring issues on the Boardwalk to be the overcrowding of performers and the fact that costumed characters are able to mask their identities. (*Id.* at 130, 132.) In response to these problems, he suggested that (1) performers not be allowed to cover their faces,

(2) performers be required to perform in designated areas on the Boardwalk, and (3) these designated areas should include locations that are currently being underutilized, such as the area by the arcades. (*Id.* at 130, 132, 135-136.)

C. Session 3: Wednesday, February 18, 2015 1:00 PM

The Task Force heard testimony from 13 witnesses, who continued to identify issues and proposed solutions. The testimony for each witness is summarized below.

(1) David Hartley

Mr. Hartley is the Fire Marshal for the Town of Ocean City. (February 18, 2015 Hearing Tr. at 4.) Mr. Hartley’s testimony centered on the use of gasoline powered generators and the ability of the fire department to access fire hydrants on the Boardwalk. (*Id.* at 5-7.) Mr. Hartley also provided the Task Force a memorandum of Fire Marshal Recommendations that discusses the topics on which he testified, which are summarized below. (A copy of this memorandum is attached as Exhibit 6.)

In years past, the Fire Department has run into issues where it has observed potential fire hazards, and all individuals spoken to were cooperative with any department intervention. (*Id.* at 4.) Nevertheless, Mr. Hartley expressed a desire to ideally get to a point with a clearly written code that provides for enforcement on the part of the Fire Department or Police Department in the event that individuals are not so cooperative. (*Id.* at 5.)

Mr. Hartley stated that, while generators may be used safely in accordance with a manufacturer’s recommendations, he has concerns regarding their fueling and refueling on such a densely populated area like the Boardwalk. (*Id.* at 5.) Mr. Hartley left it up to the Task Force to consider prohibiting the use of generators. (*Id.* at 6.) He recommended

that if generators were to be permitted on the Boardwalk, that combustible or flammable liquids be kept approximately five feet away from them. (*Id.* at 6-7.) Mr. Hartley also expressed concern about generators with respect to their exhaust and hot manifolds, which members of the public might encounter and burn themselves ~~if they are not regulated properly on.~~ (*Id.* at 7.)

Member Chase suggested that street performers using generators could be required to use a service log to assist the Fire Department in ensuring the generators are up to code. (*Id.* at 8.) Mr. Hartley confirmed this would assist the Fire Department.

If generators are to be permitted, Mr. Hartley made it clear that any fueling and refueling of generators would have to be done off of the Boardwalk, in an area that isn't heavily traveled by pedestrians. (*Id.* 8-9.) Additionally, Mr. Hartley noted that sizes of generators may vary, and as they get larger in size they are noisier. (*Id.* at 10.)

With respect to fire hydrants, Mr. Hartley recommended that in addition to keeping performers minimum distances away from fire hydrants, he would like a clear path to be available to members of the department at all times. (*Id.* at 12.) Mr. Hartley also suggested that performers should not be permitted to obstruct access to fire hydrants. (*Id.*)

(2) **Blaine Smith**

Mr. Smith is the Assistant Planning Director for Ocean City, and he has been Ocean City's Zoning Administrator since 1985. (*Id.* at 13.) Mr. Smith provided a history of zoning restrictions for the various districts in Ocean City, including the commercial zones along the Boardwalk. (*Id.* at 14-16.) Specifically, Mr. Smith described the outdoor display restrictions on commercial businesses on the Boardwalk, and stated that the

restrictions promoted public health, safety, and welfare, and served a legitimate public purpose of safeguarding tourists and families that visit. (*Id.* at 17, 24.)

Mr. Smith recognized that each year the crowd congestion increases with the number of performers on the Boardwalk, and this congestion has created issues for the businesses adjacent to the Boardwalk. (*Id.* at 19.) Mr. Smith did not specifically offer any solutions or speak to the constitutionality of performer vending of expressive material. (*Id.* at 20.)

(3) Todd Ferrante

Mr. Ferrante is the owner of “Park Place Jewelers” on the Boardwalk between 2nd and 3rd Streets. (*Id.* at 25.) Mr. Ferrante has seen in recent years an influx of buskers in Ocean City and identified congestion as the glaring issue affecting the Boardwalk. (*Id.* at 26.)

Mr. Ferrante proposed the implementation of a lottery system that rotated performers, which would give all performers equal opportunity to be in all available locations. (*Id.* at 27.) Mr. Ferrante suggested that these specific locations be limited to certain dimensions as well. (*Id.*) This system would allow performers to have their own space and ability to perform while not taking up so much space that the Boardwalk becomes impassable. (*Id.* at 27-28.)

(4) Jackie Ball

Ms. Ball is the owner of “Park Place Hotel” and “Conner’s Beach Café” between 2nd and 3rd Street on the Boardwalk. (*Id.* at 28.) Ms. Ball’s main focus is the safety of visitors to the Boardwalk. (*Id.*) Ms. Ball has received numerous complaints from hotel guests calling the front desk because they could not sit on their balcony and enjoy their stay due to the music coming from the Boardwalk. (*Id.* at 31.) Ms. Ball has also

witnessed costumed characters aggressively pursuing tips and yelling at parents when not tipped sufficiently. Ms. Ball further proclaimed that the pole dancing is unacceptable, and should not be allowed on the Boardwalk. (*Id.* at 32.) She does not feel it is appropriate for all ages and walks of life experiencing the Boardwalk.

To solve the problems that she had identified, Ms. Ball provided a list of recommendations as follows: All performers should be subjected to a permit/license requirement so that the Town is aware of their identities. (*Id.* at 29.) Moreover, performers should not be permitted to block or obstruct the movement of pedestrians. (*Id.*) Ms. Ball recommended that, if too many individuals gather for a performance, the police should be allowed to clear a path for pedestrian traffic. (*Id.*) Additionally, Ms. Ball urged the Task Force to consider a ban on performers being able to use the benches in their performance. (*Id.* at 29-30.)

In terms of an overarching fix to the current system, Ms. Ball advocated for a rotation of performers so that all individuals have an opportunity to occupy the most desirable locations. (*Id.* at 30.) These performers would also be required to have insurance, and to only have equipment which can be moved within three minutes. *Id.* at 30-32.

(5) Bruce Krasner

Mr. Krasner is the owner of multiple “T-Shirt Factory” stores in Ocean City, and has been on the Boardwalk since the summer of 1977. (*Id.* at 34.)

Mr. Krasner opined that street performers should be relegated to a separate area of the Boardwalk and be required to conduct their business in that area. (*Id.* at 34.) Mr. Krasner proposed that the spaces designated for performers should be limited to five

by five feet. (*Id.* at 37.) Mr. Krasner also recommended that performers be rotated using a lottery system. (*Id.* at 38.)

Additionally, Mr. Krasner urged the Task Force to proscribe gas generators. (*Id.* at 35.) Mr. Krasner also objected to the fumes coming from the spray painting being done on the Boardwalk, as well as the lack of knowledge of the identities of the costume wearing characters. (*Id.* at 36.) He proposed requiring a license for street performers so that all identities are known. (*Id.*)

(6) Yadigar Karsli

Mr. Karsli owns “Love’s Lemonade” on 1st Street. (*Id.* at 39.) Mr. Karsli is a former street performer who moved to Ocean City in 2000. (*Id.*) Mr. Karsli used to perform in Venice Beach, California, and stated that in Venice Beach they do not permit henna tattoo or hair wrapping or any touching of people’s skin or hair. (*Id.*) Mr. Karsli informed the Task Force that he went to Los Angeles, Santa Barbara, and Las Vegas ten days prior to the hearing, and he was unable to apply for a permit to do henna tattooing or hair wrapping. (*Id.* at 40.)

Karsli advised that Venice Beach’s boardwalk is three times longer than Ocean City’s Boardwalk, and they do a lottery system with rotation of performers confined to an eight by eight space. (*Id.* at 40.) They also proscribe gas generators and battery lighting because of the safety issues created by them. (*Id.* at 40-41.)

(7) Jim Starck

Mr. Starck is a puppeteer and performer who has been in the area for 35 years, and performed on the Boardwalk specifically for 25 years. (*Id.* at 42.) Mr. Starck provided a list of performers whom he deemed worthy of remaining on the Boardwalk because they provide true entertainment. (*Id.* at 42-44.) While he did not believe a lottery system

would work, he felt that all performers should be required to have permits or licenses to perform on the Boardwalk and that the cost of these permits should be \$100. (*Id.* at 44.) Mr. Starck also recommended having auditions for the performers to be allowed on the Boardwalk, and the ones chosen will receive a permit or license. (*Id.* at 46.)

Mr. Starck expressed an interest in improving the locations for performers, and as such, he suggested that platforms be built adjacent to the ramps from the Boardwalk to the beach. (*Id.* at 44-45.)

(8) Jimmy Miller

Mr. Miller is the owner of “Somerset Jewelers” between Somerset Street and Wicomico Street; he has been at that location for 39 years. (*Id.* at 47.) Mr. Miller stressed that the most important issue on the Boardwalk is public safety. (*Id.* at 48.) He has received many complaints of empty suitcases or baggage being left on the Boardwalk, and it has resulted in his calling the Police Department to make them aware of the situation. (*Id.* at 48.)

Mr. Miller provided the example from May 28, 2014, when a block on the Boardwalk was cleared based on an unattended backpack left there, and a robot had to be brought in to verify that it was safe. (*Id.* 49.) Later in the hearing, Lt. Pacini addressed that incident, and more fully described the process of clearing the Boardwalk and the police response to the abandoned backpack. (*Id.* at 106.)

Mr. Miller proposed the Town adopt a lottery system and that generators be banned from the Boardwalk. (*Id.* at 48, 50-51.) Mr. Miller expressed that how the Boardwalk operated last summer cannot continue. (*Id.* at 50-51.) He referred to the current state of affairs as a constant battle, and ~~that there is~~ noted the need for guidelines in order to protect the safety of the public. (*Id.*)

(9) Jessica Guthrie

~~Mr.~~Ms. Guthrie has worked on the Boardwalk for the past four years as a mermaid performer who also paints. (*Id.* at 52.) Ms. Guthrie acknowledged that there is a lot of overlapping of performers, and far too many henna artists on the Boardwalk. (*Id.*) Ms. Guthrie also noted that the Boardwalk should be family-friendly and cater to family-friendly entertainment, and that the pole dancer does not do that. (*Id.* at 53.)

While Ms. Guthrie did not believe a lottery system will work, she understood the need for having an identification requirement for performers. (*Id.* at 53-54, 55.) Still, she was not in favor of requiring performers to apply and pay for a permit or license, but only that they be required to carry identification. (*Id.* at 55-56.) She further stated that a lottery system with constant rotation would cause a great deal of congestion along the Boardwalk. (*Id.* at 54.) In Ms. Guthrie's eyes, the Boardwalk should remain a place for performances on a first come, first ~~serve~~reserved basis. (*Id.*)

(10) Mike Mueller

Mr. Mueller has been a street performer for over ten years as an artist. (*Id.* at 57-58.) Mr. Mueller expressed his fear that additional rules and regulations will be created that affect his livelihood as an artist. (*Id.* at 59-60.) Mr. Mueller asserted that the current system of self-regulation was working, and that one thing to make the current situation better would be to create more spots for performers that are not on street ends. (*Id.* at 71-72, 76-78.) Additionally, Mr. Mueller wanted the Task Force to revisit North~~th~~N. Division Street as a potential place for performers to use. (*Id.* at 77-78.) To the extent that any changes shall be made, Mr. Mueller recommended minor, incremental changes be made to the current system so that the Town can see what will and will not work. (*Id.* at 80.)

After a brief discussion with Mr. Karsli on the record, Mr. Mueller also acknowledged the existence of problems with henna tattoos, potential dangers of body art, and the lack of accountability for individuals who may be harmed by henna tattoos obtained from Boardwalk performers. (*Id.* at 84-85.) Mr. Mueller viewed henna tattooing as a public health and safety issue, and did not see it as artistic expression. (*Id.*)

(11) Maggie Miller

Ms. Miller is the owner of “Somerset Jewelers” and has been on the Boardwalk for the past 39 years. (*Id.* at 90.) Ms. Miller was concerned that Ocean City is losing its image as a family-friendly town. (*Id.* at 92.) Ms. Miller informed the Task Force that people who once came to Ocean City as children have expressed to her that they are no longer going to visit or allow their children to be on the Boardwalk because they feel it is dangerous and that street performers are invasive. (*Id.* at 91-92.)

(12) Bill Champion

Mr. Champion testified earlier at the hearing on February 9, 2015. Chairman Shockley permitted Mr. Champion to speak to a few issues raised at this meeting. (*Id.* at 92.) Mr. Champion strongly believed that a permit and license system would solve the problem of ungrateful or aggressive performers. (*Id.* at 94.) Like Mr. Starck, he also promoted the idea of a \$100 fee for the permit. (*Id.*)

Mr. Champion also suggested setting aside a specific area for the circle shows, and limiting the time allowed for those performances, which would result in a rotation for the performers who gather those large crowds. (*Id.* at 95-96.)

Mr. Champion again asserted that the performers who cover their faces should be required to have their identities be known. (*Id.* at 98.) He did not believe a rotation

would work for all performers, and he is also against the pole dancer being permitted to perform on the Boardwalk. (*Id.* at 99-100.)

(13) Lt. Mark Pacini

In response to the testimony heard that day, Lt. Pacini addressed the Task Force regarding a number of issues. Lt. Pacini urged the Task Force to consider the size of the equipment that performers use if the Task Force were to limit the size of the spaces for street performers. (*Id.* at 103.) Lt. Pacini suggested that the Town’s ordinance may have to be strengthened to address aggressive panhandling. (*Id.* at 104.) Lastly, Lt. Pacini retold his experience with the J-1 students who were hired by business owners to set up stands on the Boardwalk. (*Id.* at 106-107.) He implored the Task Force to consider these issues, as well as the issues he raised in his prior testimony. (*Id.* at 107.)

D. Session 4: Wednesday, March 25, 2015 1:00 PM

~~TO COME~~

The Task Force met on March 25, 2015 in Session 4 to review the Draft Report that the Chairman prepared (with the assistance of the resources provided by the Town) to reflect the Task Force’s discussion of the evidence and potential new regulations at the conclusion of Session 3. The Draft Report had been distributed to the Task Force members one week in advance of Session 4. At Session 4 each member discussed the Draft Report and proposed amendments to it. The Task Force voted on the proposed amendments and adopted the contents of the Final Report. The discussion of amendments and final votes were transcribed and the transcript is attached as part of Exhibit 1 to this Final Report. This Final Report was prepared by the Chairman (with the assistance of the resources provided by the Town) to reflect the Final Report adopted at

Session 4. A black-lined copy of the Final Report, showing the changes from the Draft to Final Report approved by the Task Force is attached as Exhibit 9 to this Report.

E. Written Submissions

The Task Force received three written submissions from concerned citizens who identified varying issues and proposed solutions. (Each of these submissions is summarized below, and collectively, they are attached as Exhibit 7.)

(1) William A. Gibbs

Mr. Gibbs is the owner of the “Dough Roller” restaurants and “Breakers Hotel,” among other establishments; he is a life-long Ocean City resident and has been a business owner for the past 35 years. Last year, Mr. Gibbs experienced a marked decline in business due to what he perceives to be problems stemming from the Boardwalk performers. Specifically, he received a large number of complaints from his hotel guests regarding the noise levels from performers at late hours of the night. He has had guests check out of the hotel early due to the noise, and he has also witnessed children becoming very upset at the sight of costumed characters changing on the side streets.

Mr. Gibbs has also fielded complaints from parents of children who are upset with the offensive and lewd merchandise displayed on the Boardwalk. Further, Mr. Gibbs has been extremely embarrassed when guests and friends alike call to ask him about the “Ocean City Boardwalk pole dancer.” He believes that the pole dancer created an image for Ocean City that is not desired, and that the Town’s reputation is now suffering because of what is happening on the Boardwalk.

Mr. Gibbs advocates for legal changes to be made in order for Ocean City to regain prominence as a family-friendly environment that is safe and welcoming for all guests and their families.

(2) Jeff Albright

Mr. Albright is a Boardwalk property owner in Ocean City who writes that he believes in freedom of speech, but also believes that a program must be implemented that will be agreeable to all parties that protects the health and safety of the Town’s citizens and visitors. His main goals are having a system that leads to Ocean City having the best, safest and healthiest Boardwalk in America.

Mr. Albright has received complaints from customers who are unable to sleep due to the repetition of the same music playing outside of their windows every day and night. Similarly, tenants and customers are subjected to the breathing in of fumes from a spray paint artist that covers his own face with a mask. Mr. Albright also expressed his concerns at the increase in costumed characters on the Boardwalk. Mr. Albright suggests that some sort of background check be enacted with respect to these characters.

Mr. Albright proposes that a rotation schedule for the buskers be instituted. The rotation would allow different performers to be at different locations each day and perform for varying audiences while the store owners and visiting guests are not subjected to the same performances on a daily basis.

(3) Douglas Armstrong and Joan Floyd

Mr. Armstrong and Ms. Floyd are longtime users of the Boardwalk, as well as proponents of free speech. Mr. Armstrong and Ms. Floyd, however, write that the right to free expression is not incompatible with the right to clean air. They feel that the Town is currently failing in its duty to protect the public health, safety, and general welfare due

to the fact that the use and enjoyment of the Boardwalk has been diminished by the release of hazardous materials and noxious fumes into the air by certain performers.

III. REGULATION OF THE BOARDWALK AND THE CONSTITUTION

A. Basic Principles: The Boardwalk Is A Public Forum

For the purpose of analyzing restrictions of speech on public property, the Supreme Court has divided public property into various categories. *Christian Legal Society v. Martinez*, 561 U.S. 661, 679 n. 11 (2010); *Perry Ed. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 46 (1983). Public streets and parks are the “archetype of a traditional public forum.” *Frisby v. Schantz*, 487 U.S. 474, 480 (1988) (“speakers’ rights are at their apex”); see *Steinburg v. Chesterfield County Planning Comm’n*, 527 F.3d 377, 384 (4th Cir. 2008). In *Chase v. Town of Ocean City*, 825 F. Supp. 2d 599 (D. Md. 2011), the district court ruled that “the Ocean City boardwalk is a traditional public forum.” *Id.* at 614.

In a traditional public forum “[a]ny restriction based on the content ... of speech must satisfy strict scrutiny.” *Christian Legal Society, supra*, 561 U.S. at 679 n. 11. Strict scrutiny is a demanding standard which requires that “the restriction ... be narrowly tailored to serve a compelling government interest.” *Id.* When a restriction on speech is “content-neutral” – not aimed at suppressing only certain types of speech – the restriction need only pass an intermediate level of scrutiny. Thus, even in a traditional public forum, the government may impose reasonable “time, place, and manner” restrictions on speech provided that the restrictions “(1) are “justified without reference to the content of the regulated speech”; (2) are “narrowly tailored to serve a significant governmental interest”; and (3) “leave open ample alternative channels for communication of the information” that the speaker wishes to communicate. *Clark v. Community for Creative*

Non-Violence, 468 U.S. 288, 293 (1984); *see also Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 468 (2009); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

A regulation is considered content-neutral as long as it serves a purpose unrelated to the content of the expression, even if enforcement of the regulation affects some messages but not others. *Ward, supra*, 491 U.S. at 791. The requirement that a restriction be “narrowly tailored to serve a significant governmental objective” means that the governmental goal would be achieved less effectively without the regulation. *Ward*, 491 U.S. at 798. The restriction need not be the least restrictive means available for achieving the objective, but must not be substantially broader than necessary. *Id.* at 800. A restriction may be too broad if there are numerous and obvious less burdensome and more precise alternatives. *Ward, supra*, 491 U.S. at 797 (citing *United States v. Albertini*, 472 U.S. 675, 689 (1985)). Whether there are “ample alternative channels for communication” is a very specific determination that will vary for each situation. The key question is whether the speaker’s ability to communicate effectively and reach the intended audience is threatened. *Id.* at 802; *see also, Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 655 (1981).

B. Street Vendors

Art and artistic expression are considered “speech” and are protected by the First Amendment. *Ward, supra*, 491 U.S. at 790 (recognizing that music is a protected form of artistic expression); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (dance); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975) (theater productions); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991) (acknowledging the artistic value of nude dancing); *Miller v. California*, 413 U.S. 15 (1973) (appreciating the value of “serious” works with artistic value, and distinguishing them from the obscene created for the ensuing commercial gain). Courts deciding the legality of a restriction on free speech

balance the value of the speech against the importance of the governmental interest the restriction on expression is intended to serve. *Clark, supra*, at 307-08. Expression that is considered by courts to be on the “margins of constitutional protection,” such as go-go dancing, may have little weight in these balancing tests. *Barnes, supra*, at 565-66. Expressive material does not lose its constitutional ~~protection~~protection because it is sold. *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 756 n.5 (1988).

The Supreme Court has said very little about regulation of art or expressive material when it is sold in a public forum. Only two Circuit Courts of Appeal have addressed the issue of art vending – the Second and the Ninth. Maryland belongs to the Fourth Circuit. The district court relied on Second and Ninth Circuit cases in the district court’s *Chase* ruling. The two circuits have taken a similar, although not identical, approach to analyzing the permissible scope of governmental regulation of the sale of expressive material in a public forum.

The two Second Circuit cases relied on the district court were *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996) and *Mastrovincenzo v. City of New York*, 435 F.3d 78 (2d Cir. 2006), both dealing with a New York City Vendor’s Law. The Ninth Circuit cases cited by the district court are *Gaudiya Vaishnava Soc’y v. City of San Francisco*, 952 F.2d 1059, 1060 (9th Cir.1990); *One World One Family Now v. City of Honolulu*, 76 F.3d 1009, 1011 (9th Cir. 1995); *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365, 1366-67 (9th Cir. 1997); *White v. City of Sparks*, 500 F.3d 953, 954 (9th Cir. 2007); and *Hunt v. City of Los Angeles*, 638 F. 3d 703, 708 (9th Cir. 2011). Each case is discussed in turn below.

1. The Second Circuit’s Analysis

In New York City, the General Vendors Law (“Vendors Law”) requires that all street vendors obtain a merchandise license before selling non-food goods or services in public spaces. In 1979, the Vendors Law was amended to restrict the total number of merchandise licenses available to 853, with an exception for veterans. The Vendors Law was also amended to exempt “newspapers, periodicals, books, pamphlets or other similar written matter” from the licensing requirements altogether.

In *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996), a group of visual artists sued the City, arguing that the enforcement of the General Vendors Law against art vendors violated their First Amendment rights. In that case, the Second Circuit ruled that the Vendors Law could not be applied to sellers of paintings, photographs, sculptures, and prints – which “always communicate some idea or concept” to the viewer, and thus merit full First Amendment protection. *Bery, supra*, at 696.

Bery remains binding precedent within the Second Circuit, but the scope and effect of the Opinion were significantly clarified in *Mastrovincenzo*. The plaintiffs in that case designed and sold hand-painted clothing featuring designs, words, and numbers in a “graffiti style.” *Mastrovincenzo, supra*, at 86. Given the City’s closed application list for vending permits, the plaintiffs were effectively barred from selling their works on the street. As in *Bery*, the plaintiffs in *Mastrovincenzo* challenged the application of the Vendors Law to prohibit them from selling their works. *Id.* at 87.

The Second Circuit ruled that to answer the question whether any given work is protected by the First Amendment, one has to determine whether the work’s “dominant purpose” was expressive or utilitarian. *Id.* at 95. The district court followed this analysis in *Chase*.

The Second Circuit ruled that the *Mastrovincenzo* plaintiffs’ work was not *presumptively* entitled to First Amendment protection, but rather, was *potentially* expressive. *Id.* at 93 (emphasis added). It ruled that only “paintings, photographs, prints and sculptures are “presumptively expressive,” as the court held in *Bery*. *Id.* (citing *Bery*, 97 F.3d at 696). The court found that everything else is “potentially expressive.” *Id.* at 94. The *Mastrovincenzo* plaintiffs argued that they were selling “paintings” – entitled to automatic First Amendment protection under *Bery*, only they painted on non-traditional shirts and hats. *Id.* at 86, 103. The court, however, rejected that argument, holding that only paintings on canvas were “presumptively” expressive. *Id.* at 104. The court then explained that the next question that must be asked in order to determine whether the work was expressive, and thus protected by the First Amendment, was whether the works’ utilitarian aspects outweighed its non-utilitarian attributes – *i.e.*, “whether [the works’] non-expressive purpose is dominant or not.”¹ *Id.* at 91. Using that test, the court found that the *Mastrovincenzo* plaintiffs’ works had a predominantly expressive purpose and did merit First Amendment protection. *Id.* at 105.

Nevertheless, the court held that the City of New York could ban the *Mastrovincenzo* plaintiffs from selling their “art” because the city was imposing reasonable time, place and manner restrictions on their sale, had substantial and non-content-based reasons for imposing the restriction and left open ample alternative channels of communication. *Id.*

¹ Note that the *Chase* consent decree defined “expressive material” in similar terms: “For purposes of this Permanent Injunction, ‘Expressive Material’ is defined as any item or items that (1) have been created, written or composed by the person who sells, rents or exchanges them for a donation; (2) are inherently communicative; and (3) have only nominal utility apart from their communicative value.” *See* Exhibit 2 (emphasis in original).

Specifically, the court found that New York City had articulated various valid interests: “(1) keeping the public streets free of congestion for the convenience and safety of its citizens, (2) maintaining the tax base and economic viability of the city, and (3) preventing the sale of stolen, defective or counterfeit merchandises.” *Id.* at 99 (internal quotations omitted). The court found that the “dispositive issue” was whether the significant governmental interests that the Vendor Law promoted “would be achieved less effectively absent the regulation.” *Id.* at 98 (quoting *Ward*, 491 U.S. at 799).

Accordingly, the court ruled that the requirement that “‘ample alternative channels’ exist does not imply that alternative channels must be perfect substitutes for those channels denied to plaintiffs by the regulation at hand,” nor did it mean that New York City “was required to allow the plaintiffs to sell their work directly to the public in an ideal venue.” *Id.* at 101-02. The court concluded that “whether a regulation is narrowly tailored can only be determined by considering the scope of its application relative to the government objectives being pursued, taking context into account.” *Id.* at 102.

2. The Ninth Circuit’s Analysis

The Ninth Circuit cases stand for the proposition that material that is predominantly expressive is protected by the First Amendment, but that even protected material can be regulated if the regulation (1) is necessary to support an articulated and well-supported state interest, and (2) is carefully calibrated to address the stated interest. Each of the Ninth Circuit cases cited by the district court is discussed briefly below, in chronological order. It is important to identify the state interests the court deemed sufficient to support calibrated regulation of expressive conduct and the nature of permissible regulation.

Gaudiya Vaishnava Soc’y v. City of San Francisco, 952 F.2d 1059 (9th Cir. 1990), addressed a San Francisco ordinance that required nonprofit groups selling “message-bearing merchandise such as T-shirts, books, buttons, stuffed animals, jewelry and bumper stickers” in city public places to apply for a peddler’s permit. *Id.* at 1060. The court found that the ordinance violated the First Amendment because it placed no specific limits on the Chief of Police’s discretion to issue or deny a license and thus granted him “complete discretion.” *Id.* at 1066. Accordingly, the court prohibited the city from enforcing the ordinance against any non-profit organization “with respect to the sale of merchandise which is inextricably intertwined with a statement carrying a religious, political, philosophical or ideological message.” *Id.*

One World One Family Now v. City of Honolulu, 76 F.3d 1009 (9th Cir. 1995), involved a Honolulu ordinance that banned on city sidewalks and public places the sale by non-profit organizations of T-shirts imprinted with various religious and political philosophies of the plaintiff organizations. *Id.* at 1011. The court distinguished *Gaudiya*, saying that the ordinance in that case granted the police chief unbridled discretion to grant peddling permits whereas, by contrast, Honolulu’s ordinance was a flat ban. The court upheld the Honolulu law, finding that Honolulu had demonstrated a substantial interest in (1) “protecting the aesthetic appearance of their communities by ‘avoiding visual clutter;” (2) maintaining the orderly movement of pedestrians on Waikiki’s crowded sidewalks; and (3) “protecting local merchants from unfair competition.” *Id.* at 1013. In upholding the law, the court noted “the deference due the city council’s determinations of necessity.” *Id.*

Perry v. Los Angeles Police Dept., 121 F.3d 1365 (9th Cir. 1997), addressed a Los Angeles ordinance that banned commercial activity on the Venice Beach boardwalk, but made an exception for non-profits. *Id.* at 1366-67. A street musician who wanted to sell

his recorded music and an “activist” who wanted to sell “literature, books, t-shirts, bumper stickers, buttons, and other articles bearing political slogans” filed suit. *Id.*, 121 F.3d at 1367. The Ninth Circuit reversed the course it had set in *One World*, and found that, although the government had a legitimate interest in protecting the safety and convenience of persons using a public forum, in promoting public safety, in the orderly movement of pedestrians, and in protecting the local merchant economy, the statute was overbroad and thus violated the First Amendment. *Id.* at 1371. “Given the significant state interests of the City, the statute is overly inclusive because it prohibits not only purely commercial activities, but also protected expressive activities, like those of plaintiffs here. Because the distinction between expressive activities by members of nonprofit organizations and expressive activities by others is not narrowly tailored to advance the government’s interests, the statute is unconstitutional on its face.” *Id.* The Ninth Circuit distinguished *One World* by saying that the restriction in that case “did not discriminate against certain types of speech depending on the speaker” – *i.e.*, did not discriminate between for-profits and non-profits. *Id.* The court did not say whether an ordinance that banned *all* commercial activity on the Venice Beach boardwalk would have been found constitutional.

In *White v. City of Sparks*, 500 F.3d 953 (9th Cir. 2007), the City of Sparks, Nevada prohibited the sale of merchandise in its parks and limited sales in the redevelopment area known as Victorian Square to those vendors having permits. *Id.* at 954. In an effort to comply with *Gaudiya*, the Sparks City Council made a limited exception for items that had received the pre-approval of city employees through a “First Amendment exception” to the vendor-permitting ordinances. *Id.* To gain such pre-approval, an item had to have been submitted to the city and determined by city officials to convey an obvious religious, political, philosophical, or ideological message. *Id.* The

ordinance was challenged by a “painter of nature scenes.” *Id.* The court noted that the Supreme Court had not spoken directly on the protections afforded visual art, but had been clear that the arts and entertainment constitute protected forms of expression under the First Amendment. *Id.* The court then invalidated the Sparks ordinance, holding that “so long as it is an artist’s self-expression, a painting will be protected under the First Amendment, because it expresses the artist’s perspective.” *Id.* at 956. (Notably, the court specifically refused to rule whether all paintings merit First Amendment protection, including “copies of another artist’s work or paintings done in an art factory setting.” *Id.* at 956 n. 4) Thus, the Ninth Circuit expanded *Gaudiya*, in that it held that not only were items that conveyed a religious, political, philosophical, or ideological message protected by the First Amendment, but also all “inherently expressive,” material was protected. *Id.* at 955.

Hunt v. City of Los Angeles, 638 F.3d 703 (9th Cir. 2011), presented a challenge to two Venice Beach ordinances, one enacted in 2004, the other in 2006. *Id.* at 708. Both required that any person engaging in allowable activities on the boardwalk obtain a “Public Expression Participant Permit,” and spaces on the boardwalk where expressive activity could be conducted were assigned pursuant to a weekly lottery system. *Id.* at 707. “Allowable activities” were defined in the 2004 ordinance to mean selling “merchandise constituting, carrying or making a religious, political, philosophical or ideological message or statement which is inextricably intertwined with the merchandise.” *Id.* The Ninth Circuit found that plaintiffs, sellers of shea butter and incense, were not clearly in or out of that category and, therefore, that the law was “void for vagueness.” *Id.* at 711.

[A] police officer would have to engage in a ‘highly fact-specific analysis’ to determine whether a person selling merchandise is relaying a message, whether that message qualifies as being religious, political, philosophical,

or ideological, and whether that message is inextricably intertwined with the products being sold. Without any clear guidance from [the 2004 law] on these issues, such determinations would necessarily be left to the subjective judgment of the officer. ... [T]his lack of clarity may operate to inhibit the exercise of freedom of expression because individuals will not know whether the ordinance allows their conduct, and may choose not to exercise their rights for fear of being criminally punished.

Id. at 712-13.

The 2006 ordinance, on the other hand, prohibited all vendors and vending, except for (1) “newspapers, leaflets, pamphlets, bumper stickers or buttons”; (2) “items which have been created, written or composed by the vendor: books, cassette tapes, compact discs, digital video discs, paintings, photographs, sculptures or any other item that is inherently communicative and has nominal utility apart from its communication”; and (3) “Performances by performing artists and musicians.” *Id.* at 707. Finding that the second exception above (for “inherently communicative” items) was not too vague and clearly proscribed the sale of shea butter and incense, the court went on to uphold the 2006 ordinance. *Id.* at 714-15. (The court never ruled on the lottery and permit system, presumably because the plaintiffs would have been ineligible for a “Public Expression Participant Permit.”)

Hunt was not the last word with respect to the Venice Beach regulations, however. In *Dowd v. City of Los Angeles*, 2013 WL 4039043 (C.D. Cal. Aug. 7, 2013), a district court considered the 2008 ordinance that there “was a space allocation system which assigned performers to particular spots to effectively distribute the limited space of the Boardwalk.” *Id.* at 8. The city defended the permit and lottery system, which it said “provided a mechanism for officers to resolve disputes about space allocation in a neutral manner,” was “designed to discourage pre-dawn arrival at the Boardwalk in order to secure a space” and used to “expand the pool of potential performers to include speakers

who might not assert themselves in a first-come-first-serve situation.” *Id.* The district court found that the ordinance appeared to be carefully crafted to resolve the problems identified in the factual findings and upheld the lottery and space system. *Id.* The court also upheld the height restriction, which limited performers and vendors to using items no more than 4 feet above ground in any designated space:

[T]he regulation, while limiting some speech, is not substantially overbroad; Plaintiffs have some limitations on their performances—they cannot use microphones of a certain height, and performers accustomed to performing from ladders are unable to do so—but the limitations leave ample channels of communication while advancing the City’s interests. The limitations placed on Plaintiffs’ performances are not so substantial as to lead the court to micromanage the City’s regulation of public safety and aesthetics.

Id. at 13.

C. Street Performers

Street performances are a form of expression protected by the First and Fourteenth Amendments of the United States Constitution. *See e.g., Davenport v. City of Alexandria*, 710 F.2d 148, 150 (4th Cir.1983) (en banc). Beyond that, much of the law applicable to street performances is undefined. So, for example, questions regarding what is a street performer, whether a street performer can be licensed or even barred altogether under certain circumstances, and to what extent the government can regulate street performances, have no conclusive answers. As with other reasonable time, place and manner restrictions, the key is that a government may not limit speech based on its content, and may impose only those restraints that are “narrowly tailored to serve a significant governmental objective” and leave open “ample alternative channels for communication.” *Ward, supra*, at 791.

In *Davenport v. City of Alexandria*, 710 F.2d 148 (4th Cir. 1983), the Fourth Circuit (which includes Maryland) considered an ordinance enacted by the City Council of Alexandria, Virginia. The ordinance prohibited performances and exhibitions on the sidewalks, walkways or other public property of the central business district of Alexandria, and provided that a person who wanted to perform in an area where performance was allowed had to first obtain a permit. *Id.*, ~~710 F.3d~~, at 149-150. The ordinance was challenged by a street musician. The Fourth Circuit upheld the licensing requirement but, after sending the case to the lower court for factual development, upheld the lower court's finding that "the total ban of street performers from public sidewalks throughout the [central business district] and for all hours is much more broad than is necessary to satisfy any interest in public safety the city has" and that "there has been shown no safety interest substantial enough to outweigh the plaintiff's First Amendment interests." *Davenport v. City of Alexandria*, 748 F.2d 208, 210 (4th Cir. 1984).

In 2001, the Eleventh Circuit upheld an ordinance that prohibited street performances in the four block area of historic St. Augustine. *Horton v. City of St. Augustine, Fla.*, 272 F.3d 1318 (11th Cir. 2001). The ordinance defined "performance" as follows:

Perform includes, but is not limited to acting, singing, playing musical instruments, pantomime, mime, magic, dancing, and the sale of visual art and wares, which shall include drawings and paintings applied to paper, cardboard, canvas or other similar medium when such art is applied to the medium through the use of brush, pastel, crayon, pencil, or other similar object, and the creation, display and/or sale of crafts made by hand or otherwise.

The following activities shall be prohibited because of issues of safety to the public: Any activity involving spray painting or use of aerosols or propellants, including air pressure, to spray or apply any liquid; the use of fire; or the use of any weapon as defined within Florida Statutes.

Id. at 1321. The Court upheld the ordinance as a reasonable time, place and manner restriction, citing the city’s interest in crowd and traffic control. *Id.* at 1333-34. There, the city had filed a transcript of a Commission hearing and several affidavits to document its governmental interests. *Id.* at 1334 n. 19. The issues discussed in these materials included congestion, noise, illegal activity, rudeness, and diminished aesthetics. *Id.* Curiously, this was not the city’s first attempt to regulate street performers. Some twenty years earlier, the city had enacted an ordinance prohibiting street performances on all public property within the city, but a district court held the ordinance unconstitutional on the ground that it was not narrowly tailored to serve a significant government interest. *Id.* at 1328 n. 9.

More recently, in *Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009), the Ninth Circuit addressed street performance issues. This case dealt with the Seattle Center Campus Rules, applicable to street performers in the twenty-three acres of outdoor public park space contained within an 80-acre expanse of public space. *Id.* at 1035. The plaintiff, Magic Mike, a street performer, challenged five of the Rules: Rule F.1, which required “street performers” to obtain a permit before performing at the Center and to wear a badge displaying that permit while performing; Rule F.2, which set forth the terms and conditions for acquiring a “Street Performer Permit”; Rule F.3.a, which barred street performers from “actively solicit[ing] donations”; Rule F.5, which limited street performances to sixteen designated locations; and Rule G.4, which prohibited all Seattle Center visitors, other than Center employees and licensed concessionaires, from engaging in “speech activities” within thirty feet of a “captive audience.” *Id.*

The Court invalidated all but F.5., the 16 designated locations rule, which it sent back to the trial court for factual development about how that rule would serve the government’s interests. *Id.* at 1048-50.

The court was critical of the permitting requirement, which it found would apply to all individual speakers who wished to express themselves in a public forum and was not limited to only those performers who sought to attract a crowd of a sufficiently large size, and thus was overbroad. *Id.* at 1040. In addition, the court found that the Rules were not narrowly tailored and that Seattle could accomplish its goals (protecting the safety and convenience of park-goers by reducing territorial disputes among performers, deterring harassment of audience members, and clarifying and coordinating potentially competing uses) in less restrictive ways. *Id.* at 1041. Notably, it was the fact that the Rules did not restrict performers to a particular territory or to a particular time period within a given territory that the court thought made the lottery system not a good “fit” in light of the government’s objectives. *Id.*

Even more recently, in *Peck v. City of Boston*, 750 F. Supp. 2d 308 (D. Mass., 2010), a district court found that there were disputed factual issues that required a jury to determine whether Boston’s restriction of performers at Faneuil Hall to a designated “performance space” was a reasonable time, place and manner regulation. *Id.* at 316. In dispute were issues regarding the city’s motivation for the restriction (whether it was created for the purpose of addressing noise or to secure the Faneuil Hall property and ensure public safety) and the size of the performance space. *Id.* at 314. (The plaintiff, whose act consisted of appearing in a gold costume, painted in gold, claimed it was 225 square feet; the city said it was 5,000 square feet. *Id.* at 316.)

The latest word comes from the Fourth Circuit in *Reynolds v. Middleton*, 2015 WL 756884 (4th Cir. Feb. 24, 2015). There, the court considered a law that banned charitable solicitations (*e.g.*, panhandling) on highway medians. *Id.* at 1. The Fourth Circuit stressed the importance of a developed factual record. *Id.* at 93. Relying on a recent Supreme Court opinion, *McCullen v. Coakley*, 134 S.Ct. 2518, 2539 (2014), having to do

with Boston’s creation of a 35 foot “buffer zone” around abortion clinics, the court held that the county could rely on common sense and logic to conclude that, by removing solicitors from county roadways, the ordinance reduced the number of people engaging in a dangerous activity and thus furthered the county’s safety interest in a direct and material way. *Reynolds, supra*, at 6. Nevertheless, reliance on common sense and logic alone was not enough to sustain the regulation. In addition, the county needed to prove that it actually tried other, less restrictive, methods to address the problem and that those methods had failed. *Id.* at 6. In other words, the county had to show that alternative measures would fail to achieve the government’s interests, “not simply that the chosen route is easier.” *Id.* at 8. Because there was no evidence that the county ever tried to improve safety by prosecuting any roadway solicitors who actually obstructed traffic, or that it ever even considered prohibiting roadway solicitation only at those locations where it could not be done safely, the county could not prove that it passed the “reasonable time, place and manner” test. The court did not simply rule in favor of the plaintiff, however. Instead, it found that the county should have an opportunity to gather and present evidence sufficient to satisfy the *McCullen* standard, so it remanded the case to the district court. *Id.*

IV. THE VENICE BEACH, CALIFORNIA ORDINANCE: ADDRESSING SIMILAR ISSUES

A jurisdiction analogous to Ocean City for purposes of Boardwalk regulation that has adopted ordinances that have been subjected to review in the federal courts is Venice Beach, in Los Angeles. Accordingly, the most relevant portions of the Venice Beach ordinance are discussed and set forth below.

In 2004, the City of Los Angeles adopted a Venice Beach Boardwalk regulation that banned all commercial activity on the Boardwalk, except that it allowed permit

holders to sell “merchandise constituting, carrying or making a religious, political, philosophical or ideological message.” *Hunt, supra*, at 712-13. When challenged, the Ninth Circuit Court of Appeals found that the description of permitted activity in the ordinance was unconstitutionally vague. *Id.*

In 2006, Los Angeles amended its Venice Beach Boardwalk ordinance. The ordinance continued to ban all sales, except it created exceptions that were less vague, so that the ban did not apply to:

(1) Any individual or organization vending newspapers, leaflets, pamphlets, bumper stickers or buttons;

(2) Any individual or organization that vends the following items, which have been created, written or composed by the vendor: books, cassette tapes, compact discs, digital video discs, paintings, photographs, sculptures or any other item that is inherently communicative and has nominal utility apart from its communication;

Although an item may have some expressive purpose, it will be deemed to have more than nominal utility apart from its communication if it has a common and dominant non-expressive purpose. Examples of items that have more than nominal utility apart from their communication and thus may not be vended under the provisions of this section, include, but are not limited to, the following: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals;

(3) Performances by performing artists and musicians.

LAMC § 42.15.

As stated above, in *Hunt*, the Ninth Circuit Court of Appeals found that the revised 2006 Venice Beach ordinance was not unconstitutionally vague, but instead defined the merchandise that could be sold in such a way that both police officers enforcing the law and potential street vendors would know what was allowed. *Id.* at 714-~~715~~15.

Note that the terms of “performer” and “performance” are expressly defined in the Venice Beach ordinance:

11. Perform, Performing, Performance or Performances. To engage in any of the following activities on public property: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, engaging in magic, creating visual art in its entirety, presenting or enacting a play, work of music, work of art, physical or mental feat, or other constitutionally protected entertainment or form of expression. The terms Perform, Performing, Performance or Performances shall not include:

- (a) The application of substances to others’ skin, including but not limited to, paints, dyes and inks;
- (b) The provision of personal services such as massage or hair weaving, cutting or styling;
- (c) the completion or other partial creation of visual art;
- (d) the creation of visual art which is mass produced or produced with limited variation; or
- (e) the creation of Handcrafts.

12. Performer. A Performer is a Person who Performs. Performer includes the employers, employees, and agents of a Performer. Indicia of being a performer include, but are not limited to, setting up performance equipment, staging or orienting the performance towards the public, performing in the same location for an extended period of time, performing in the public over multiple days, seeking voluntary contributions through passing around a hat or leaving open an instrument case or other receptacle, and soliciting donations after a performance.

LAMC § 42.15. (It is unclear whether costumed characters would fall within the definition of “performer.” According to an L.A. City Attorney, costumed characters do not come to Venice Beach; he thinks because it is not profitable given the nature of tourists in that area.) The preamble to the current Venice Beach ordinance states as follows:

B. Findings and Purposes. The City Council of the City of Los Angeles finds and declares as follows:

1. The Boardwalk and Recreation Area constitute a major tourist attraction in the City, hosting approximately 16 million visitors annually. The Boardwalk and Recreation Area are limited spaces geographically, located in a narrow, linear City park that is bounded by the beach to the West and private property to the East. The total width of the Boardwalk is only ten feet in certain sections and only as wide as 50 feet in other limited areas. The space is further constrained by the fact the Boardwalk and Recreation Area serve as emergency ingress and egress routes.

2. Historically, visitors, including tourists, have been drawn to Venice beach because, the Boardwalk and Recreation Area served as a traditional public forum for performance and visual artists, as well as other free speech activity. Vendors of Food, Goods and Merchandise viewed the large crowds of visitors to the Boardwalk and Recreation Area as a pool of potential customers and Vending proliferated. As the numbers of commercial Vendors increased, the number of Performers and persons engaging in free speech activities decreased both because of the limited amount of space and because of the change in atmosphere from a vibrant center of art and expression to a commercial “flea market” atmosphere. Competing interests for space on the Boardwalk and Recreation Area intensified and physical altercations for space and disturbances of the peace resulted in law enforcement responses and arrests.

3. Unregulated Vending and Performances adversely affect the historic character of the Boardwalk, hamper rather than encourage a wide variety of performances, visual artists and other free speech activity, as well as jeopardize the public safety of visitors to the Boardwalk, resulting in an economic and cultural loss to the City. Therefore, the Boardwalk requires reasonable time, place, and manner restrictions to retain its unique historic character as a center of performance, art, and other free speech activity, preserve its status as a tourist attraction, protect the commercial life of the Boardwalk, and ensure the safety and enjoyment of residents, visitors, advocates, artists, 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 City.

Id. The space allocation/rotation provision in the Venice Beach ordinance states:

E. Allocation and Use of Designated Spaces. The City’s Board of Recreation and Parks Commissioners shall designate a total of 205 spaces on the Boardwalk, referred to as the “Designated Spaces”. The Designated Spaces will be available for use in accordance with a first-come, first-served system or any other legally permissible allocation system adopted by the Board at a duly noticed public hearing at which the public is provided an opportunity to comment, as required by the Ralph M. Brown Act, posted at the Recreation Office for at least ten (10) days prior to implementation.

The 205 Designated Spaces shall be made available for the activities described in Subsection D. above. Five of the Designated Spaces shall be double-sized, large act spaces for Performers whose number of Performers plus audience can be anticipated to exceed 25 Persons. Two of the regular-sized Designated Spaces shall be made available for Persons engaging in any activity that is described in Subsection D. and who are predominantly giving away Food. The remainder of the regular sized, Designated Spaces shall be made available for Persons engaging in any exempt activity described in Subsection D.

Persons using the 205 Designated Spaces are subject to, and shall comply with, the following restrictions and the Program Rules adopted by the Board:

1. The five double-sized, large act Performer spaces historically have been used by Performers (such as acrobats) whose performances require more space than is available in a single-sized, Designated Space, and have been used by Performers who attract large crowds due to the nature of their performances. The five, double-sized, large act Performer spaces are the only spaces able to safely accommodate large scale performances or a large audience and, therefore, in order to facilitate a variety of Performances in these double-sized spaces, the Performer spaces are subject to a rotation requirement, whereby each Performer using one of the five Performer spaces shall relinquish the space on the hour, every hour, whenever another Performer is waiting to use the Performer space in which the Performer is Performing.

Id. (The Venice Beach ordinance is attached in its entirety as Exhibit 8.)

V. THE CURRENT LAW IN OCEAN CITY REGULATING PERFORMANCES AND SALES ACTIVITY ON THE BOARDWALK

A. The Town Of Ocean City Ordinance

In 2011, the City Council adopted an ordinance (Section 62 of the Code of the Town of Ocean City) that required all street vendors and performers to confine themselves to the street ends, required all street performers to register with the Town, and banned all sales by street performers and vendors.

That ordinance was challenged in federal district court. The lead plaintiff in that case was Mark Chase, who is a member of the Task Force that is submitting this report. As stated earlier, the district court found that some parts of the ordinance were necessary to protect public health and safety, while others unnecessarily and impermissibly curtailed First Amendment rights to free expression. *Chase v. Town of Ocean City*, 825 F. Supp. 2d 599 (D. Md. 2011).

In brief, the district court upheld that portion of the Town law that restricted street performers to certain parts of the Boardwalk (the street ends, with the exception of the end of [North N. Division Street](#), from which performers were excluded completely). *Id.* at 620. The district court, however, struck down the licensing requirement, and ruled that the Town could not prohibit the sale of “expressive materials” by street vendors. *Id.* at 630.

Although the district court’s 2011 Order defined “expressive materials,” enforcement of the law has posed challenges. Specifically, police officers charged with enforcing the law often have had to decide (and not known how to decide) whether any given item sold on the Boardwalk was protected “expressive material.” The Order defines “expressive materials” as follows:

any item or items that (1) have been created, written, or composed by the person who sells, rents, or exchanges them for a donation; (2) are inherently communicative; and (3) have only nominal utility apart from their communicative value.

a. By way of example, and not limitation, the following items ordinarily are inherently communicative and have only nominal utility apart from their communicative value: books, pamphlets, cassette tapes, compact discs, digital video discs, paintings, photographs, and sculptures.

b. By way of example, and not limitation, the following items ordinarily either are not inherently communicative and/or have more than nominal utility apart from their communicative value: housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfume, lotions, candles, jewelry, toys, and stuffed animals.

See Exhibit 2.

B. How Police Implement Current Law

Immediately following the *Chase* ruling, the Town of Ocean City set about educating the persons responsible for enforcing the law. To that end, the Police Department sought guidance from the ~~Town Attorney~~[City Solicitor](#) and then, through Lt. Pacini, trained every police officer responsible for policing the Boardwalk. In addition, Lt. Pacini gave a presentation to local merchants about the new law and put out an educational flyer for Boardwalk performers and merchants. (February 9, 2015 Hearing Tr. at 15.) Lt. Pacini was designated the “go-to” officer with respect to Boardwalk regulation, and all questions or issues encountered by other police officers patrolling the Boardwalk were brought to and resolved by him. (*Id.* at 16.)

Lt. Pacini describes enforcement of the ordinance as “a daunting task” and noted that he was called upon to respond to at least one Boardwalk-related issue on a daily basis. (*Id.* at 13: 19-20, 16.) Resources (including all of the time and efforts of Lt. Pacini, one of the Police Department’s most senior officers) were diverted from other pressing law enforcement needs in order to handle Boardwalk regulation. (*Id.* at 19.)

The Town operates under a red light/green light system referred to as “Gray Area Expressive Material.” (*Id.* at 14:9-10.) Whenever a street merchant sets up on the

Boardwalk to sell items that are clearly non-expressive, the police do not permit him or her to conduct business. Sellers of items that obviously are expressive (*e.g.*, paintings on canvas) are allowed to carry on their business. A police officer who encounters the sale of items that are not clearly one thing or the other confers with Lt. Pacini, who is responsible for giving a red or green light to any item as to which there is doubt. If Lt. Pacini determines that an item falls into a “gray area,” and he is in doubt as to whether it is or is not “expressive,” sales of the item are permitted until Lt. Pacini has consulted with the ~~Town Attorney’s~~City Solicitor’s office.² Once counsel has given the item either a red or green light, Lt. Pacini proceeds accordingly. (*Id.* at 14.)

C. Issues On The Boardwalk Under Current Law

Crowds that block the tram line, prevent emergency access to the Boardwalk, keep tourists from moving and generally present a safety problem are a major concern. (*Id.* at 23.) Some of the performers put up elaborate signs (which rankles store merchants, who must pay a fee in order to put out a sign); some use public facilities, such as benches or the sea wall, to hold their wares; others rope or chain off areas so that others cannot encroach on their space; others leave property behind to “stake out” their spots. (*Id.* at 24-26.)

D. Violations Of Other Laws

The proliferation of street performers has encouraged merchants who operated out of traditional brick and mortar establishments to violate the zoning laws by bringing their business out onto the Boardwalk where they could better compete with street vendors.

² On the day that he testified, Lt. Pacini had received an inquiry about one such item: jewelry made by the person who wanted to sell it. Other items and/or performers that he deemed to fall within the “gray area” were books, CDs of music that the seller was not performing, paintings that the seller was not painting, tarot card readers and henna tattoo artists. *Id.* at 20.

Thus, for example, outdoor stands selling henna tattoos (which have previously been treated by law enforcement as “expressive” and, accordingly, were permitted to be sold on the Boardwalk) have been set up and staffed by store owners or renters who sell henna tattoo services inside their stores. (*Id.* at 19-21.) Lt. Pacini testified regarding one incident in which a store merchant set up a henna stand directly in the spot where a street performer/vendor had set up – actually moving the street vendor’s stand out of the way, and then threatened to kill the street vendor. (*Id.* at 36-37.) Because there is a great deal of animosity and competition for space between traditional brick and mortar merchants of henna tattoos and the street vendors, Lt. Pacini and his staff devote a great deal of time and effort to pursuing these zoning violators, instead of engaging in other law enforcement activities.

A group of individuals with whom Lt. Pacini has not known how to deal are the “cartoon characters” – individuals who dress up as well-known cartoon characters and then ask for tips after allowing themselves to be photographed by tourists. The cartoon characters attract children and tend to wear costumes that hide their faces. Last summer, some of the brick and mortar merchants decided to get in on the act, so they had their employees (many of whom were students with J-I visas) put on a costume, go outside and collect tips from tourists. (*Id.* at 25-26.) Usually, the merchants paid the student workers (whose visas would not have allowed them to “perform” on the Boardwalk) an hourly wage, while the merchants retained the much greater tip earnings. (*Id.* at 26).

At one point, Lt. Pacini wondered if cartoon characters were violating a copyright or trademark. He contacted in-house counsel at the Disney Co. and the company was unwilling to get involved. (*Id.* at 21.) Other types of street performers/vendors who raise concerns for law enforcement and who might be acting in violation of other laws are: disc jockeys and musicians who play amplified music; performers who erect stages and

platforms; impersonators; performers who bring weapons onto the Boardwalk; performers who produce spray paint fumes or use generators, gasoline, umbrellas and a dance pole on the Boardwalk; a hula hooper who asks children in the audience to join her in performing; performers/sellers whose performances/sales involve the touching of another – face painters, henna tattooists, hair braiders and featherers. (*Id.* at 21-2, 27.)

VI. RECOMMENDATIONS

The preceding Sections I through V, the background portion of the Task Force Report, were approved by the Task Force. After hearing live testimony, considering the written submissions and taking into account our understanding of the law, this Task Force recommends as follows:

A. Define “Expressive Material” And “Performer”

Both the creation, distribution and sale of expressive material and performances are entitled to First Amendment Protection. (Below, these activities will sometimes be referred to as “expressive activity.” Further, both vendors of expressive material and street performers will sometimes be referred to as “street performers” or “performers.”) Multiple issues have arisen as a result of uncertainty about whether any given item or act qualifies as “expressive” or as a “performance.” For instance, the Ocean City police department has had to divert resources – both time and manpower – to determining what activities are expressive activities permitted on the Boardwalk. Lt. Mark Pacini, one of the most experienced officers in the Ocean City Police Department, devotes all of his time during the peak tourist season (roughly from Memorial Day to Labor Day) to policing the Boardwalk and resolving issues encountered by performers, merchants and other police officers who patrol the area.

Dealing with the uncertainties created by the current ordinance is difficult and time-consuming. If an effective, efficient system were put in place to determine which activities are expressive activities, Lt. Pacini's time and efforts, as well as those of other police officers, could be spent dealing with more traditional law enforcement matters. Likewise, performers and street vendors are frustrated by not knowing whether or not they will be or are engaging in permissible activity. Boardwalk merchants are also frustrated by not knowing what performances and street sales are permitted in close proximity to their stores and whether they should attempt to extend their activities onto the Boardwalk. Because everyone involved wants more certainty regarding what is allowed, many have asked that the Town law explicitly define what is permitted on the Boardwalk with respect to expressive activity by street vendors and performers.

Under the current system, one person (in law enforcement) has the authority and obligation to interpret the law as amended by the district court ruling, and determine whether any given activity is expressive, and can therefore be conducted on the Boardwalk. These decisions many times have to be made with little time for reflection and in the midst of a crowd and pedestrian traffic on the Boardwalk. Further, because uncertainty exists as to whether or not any given use will be allowed, individual artists and performers may unnecessarily censor themselves.

The current system of Boardwalk operation results in overcrowding, disorder and unnecessary conflict. The Boardwalk is not large enough to accommodate every performer who wants to perform in the prime, most heavily traveled portions of the Boardwalk. Consequently, there are often altercations over a desirable spot, and conflicts among performers about who has priority rights to any given location, often leaving behind personal property in an attempt to stake out entitlement to a prime site. Because there are so many performers on the Boardwalk, tourists often are overwhelmed. The

overcrowding also results in many store entrances being blocked by performers or the tourists watching them and pedestrian traffic on the Boardwalk is severely hampered. One witness described the proliferation of sidewalk performers and vendors as “untenable.” (February 18, 2015 Hearing Tr. at 51.)

Other jurisdictions have encountered similar problems and have addressed them by putting into effect regulations that leave little doubt as to what activities are allowed and not allowed and where expressive activity can be conducted. Accordingly, the Task Force recommends that Ocean City adopt an ordinance that defines both “expressive material” and “performance” so as to eliminate uncertainty. By defining these terms, specifying what will be permitted and where it will be permitted, Ocean City can alleviate congestion and conflict on the Boardwalk and improve the experience for all involved without impinging on freedom of expression guaranteed by the First Amendment.

The definition of performance below excludes henna tattoos and other analogous personal services in which paint or dye is applied to the skin or hair or if there is touching of the person for whom the services are performed. Many have expressed grave concerns about “henna tattoo artists” for both health and safety reasons. Henna tattooists set up a table or stand and offer to either sell or for a gratuity (sometimes for an explicitly stated amount) draw on the arm, wrist or other part of a customer’s body using what they refer to as “henna.” The ink used to draw “henna tattoos” is often hair dye that can irritate the skin. Moreover, these individuals often have no accountability. There have been instances when individuals who had adverse reactions to the dyes tried to go back to the stand where they had the “tattoo” applied to learn more information about what had been done to them, only to find that the stand was gone. The Worcester County Health Department has been called to investigate the use of dyes and pigments in these sales and

performances, but has concluded that it lacks the power to regulate these services because they are not performed inside licensed establishments. Many indoor establishments that featured tattoo artists inside their stores have concluded that it is necessary to move their operations outside in order to better compete with henna tattoo street vendors/performers. Tattooists, face painters, hair braiders and masseuses who operate outside a licensed establishment are currently unregulated. The Task Force has concluded that the Town should take action to protect the health and safety of Boardwalk visitors from inappropriate touching and dangerous chemicals, and wants to reduce congestion on the Boardwalk and competition and conflict between shop owners, henna tattoo artists and street vendors (which has sometimes become violent).

Accordingly, the Task Force proposes that the Town adopt an ordinance regarding Boardwalk regulation that contains the following explicit definitions:

Expressive material means newspapers, periodicals, books, pamphlets or other similar written material; it also includes cassette tapes, compact discs, digital video disks, paintings on paper or fabric, photographs, sculpture and prints that have been created or composed by the vendor. The sale of these items will be permitted on the Boardwalk at locations permitted under the terms of this ordinance. The sale of any other item will not be permitted on the Boardwalk. Expressive material shall not include the application of substances to others' skin, including but not limited to paints, dyes and inks.

Performers will be permitted to perform on the Boardwalk at locations permitted under the terms of this ordinance. The terms perform, performing and performance, as used in this ordinance, 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. Indicia of a "performance" or "performer" are seeking and/or accepting voluntary contributions through any means, including passing around a hat or leaving open an instrument case or other receptacle, soliciting, and/or accepting, directly or indirectly, donations after a performance, attempting to draw attention, convene an audience and/or engage onlookers as spectators or

participants in a “performance.”³ 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. The terms perform, performing and performance shall not include:

1. The application of substances to others’ skin, including but not limited to paints, dyes and inks; or
2. The provision of personal services that involve the touching of another, such as nail painting or hair weaving, braiding, cutting, or styling.

The proposed definitions borrow from the laws of other jurisdictions that have encountered issues similar to those faced by Ocean City. New York City, for example, bans the sidewalk sale of every item except for written materials (“newspapers, periodicals, books, pamphlets or other similar written material”) and paintings on canvas, photographs, sculpture and prints. *Mastrovincenzo, supra*, at 83 n.2, 104. After concluding that preventing congestion and providing for the safety of its citizens were legitimate government interests, the Second Circuit Court of Appeals concluded that even protected, expressive materials could be subject to reasonable time, place and manner regulation in order to further those goals.

Similarly, the Venice Beach ordinance allows the street sale of only expressive materials, including performances, but has defined street performances to exclude all personal services or drawing on the skin. The definition proposed here would not characterize as a “performer” a person who wants to sing, play an instrument, or engage in other performance-like activity not for remuneration or for purposes of attracting a crowd, but purely as a social activity.

³ [The Task Force does not condone the aggressive solicitation of contributions by performers, expecting solicitation at all times to be “non-aggressive.” The Task Force recommends that the Town Council take legislative action to forestall aggressive solicitation, such as the adoption of a definition of “performer” that recognizes that the aggressive solicitation of contributions is not an indicium of a “performer.”](#)

B. Required Registration For Spaces In Which Expressive Activity Must Be Conducted In The Most Congested Areas On The Boardwalk

The Task Force recommends that, in congested areas on the Boardwalk, the Town require persons engaging in expressive activity to conduct this activity in designated spaces for which they must register. Further, the Task Force recommends that the Town adopt rules and regulations regarding the assignment of the spaces and the activities that may be undertaken by persons conducting expressive activity.

1. Location And Configuration Of The Spaces

The Task Force recommends that, with the exception of S. Division Street, the Town establish the location and configuration of spaces between South 1st Street and Ninth Street where expressive activity can be conducted. The most congested area of the Boardwalk during the summer season is from South 1st Street to Ninth Street. This is the area where most street performers are located. The Town should continue the practice of permitting expressive activity only at the street ends, and thus, aside from S. Division Street, the spaces should be located at the street ends between South 1st Street and Ninth Street. ~~After~~On S. Division Street and after Ninth Street, the Town should require expressive activity be conducted at street ends, but need not establish spaces. The Task Force recognizes that S. Division Street contains a large street end plaza where performers who generate larger crowds frequently perform.

The configuration and nature of the Boardwalk at street ends varies greatly from South 1st Street to Ninth Street. No street end is precisely the same. For example, some street ends have concrete plazas on either the east or west sides of the Boardwalk (or both) while also containing a concrete tram pathway. Some street ends have facilities, such as restroom buildings or picnic tables. Further, north of Fourth Street, the Boardwalk narrows markedly, resulting in the tram running down the center of the

Boardwalk. Accordingly, the number and size of spaces that can be safely and effectively accommodated varies at each street end. The Town should establish the spaces at locations where crowds that gather around performers or persons selling expressive material will not block access to the Boardwalk, store fronts, fire hydrants, public benches, or the tram lane. Where possible, the number of spaces per street end should be 10 feet by 10 feet; where not possible, exceed three, and the size of the spaces should be no greater than 100 square feet by 10 feet. The spaces should be clearly marked to identify their location and boundaries, but, in an effort to preserve the aesthetic qualities of the Boardwalk, these spaces should not be demarcated by the painting of lines on the Boardwalk. Instead, the Task Force recommends that the Town determine a more appropriate manner to define the spaces.

The Task Force has not conducted a specific analysis to identify the appropriate number and configuration of spaces on each street end. The Task Force, however, believes that configuring establishing spaces in this fashion will provide ample opportunity for expressive activity conducted by performers mindful of the need to ensure the free flow of pedestrian traffic and access to stores and other facilities. The Task Force recommends that, prior to establishing spaces, the Town perform an analysis that determines the appropriate number and configuration of spaces on each street end. With respect to street ends, the Task Force recommends that, if the Town Council should decide to enact an ordinance which requires the establishment of spaces, at the time it enacts the ordinance the Council should adopt a resolution in which it identifies with specificity the location and configuration of spaces.

To allow access for emergency vehicles, the Task Force recommends that no expressive activity should be permitted at the street ends of N. Division and Dorchester Streets.

2. Assignment Of, And Registration For, The Spaces

Further, the Task Force recommends that the marked spaces between ~~the~~ South 1st Street and Ninth Street be assigned ~~ontwice~~ a ~~weekly basis~~week at a location in City Hall or another City government office. The spaces should be assigned on a first come, first served basis ~~for~~pursuant to the ~~following week beginning at the opening of business on Monday and closing at 2:00 p.m. on Friday.~~procedure described below. A person seeking to have the space assigned to him or her for the following ~~week~~Monday through Thursday must register for the space on the preceding Monday by providing his or her name, and the names of all persons participating in the expressive activity. A person seeking to have the space assigned to him or her for the following Friday through Sunday must register for the space on the preceding Friday in the same fashion.

Further, at the time a person seeks to register for a space, the Town official should provide the person with a registration form that states the rules and regulations for the use of the space. The Town should also require the person seeking to register to pay a nominal fee to be determined by the Town for the administration of the registration system. A person seeking to register should be required to describe on the form the nature and scope of the activity in which the person intends to engage in sufficient detail that the Town official responsible for assigning the space can determine that the person will be engaging in permitted expressive activity. The person seeking to register must sign the form and the form should state that the person registering for the space has reviewed the rules and regulations for the use of the space and agrees to comply with them. Furthermore, the Task Force recommends that upon registering for an assigned space, a performer must furnish proof of an insurance policy maintained by the

individual(s) seeking to engage in expressive activity. The Task Force recommends that the Town determine the minimum amount of coverage for which the required insurance should provide. Finally, the Task Force recommends that this insurance policy contain a “hold harmless clause” with respect to the Town.

A person will be prohibited from registering for a space on the same street end ~~in two successive weeks.~~ ~~A person registering for a space shall include all persons registered on~~during the form as participating in the expressive activity.~~same week.~~ Thus, if the Town establishes spaces designated as A, B, ~~C~~ and ~~DC~~ at the end of ~~First~~Second Street, the person or persons who are registered for Space A on ~~First~~Second Street Monday through Thursday of the first week of June cannot ~~be registered~~later register for a space at the end of ~~First~~Second Street ~~in~~from Friday through Sunday during the first week of June. Additionally, if a person registers for Space A on Second Street from Friday through Sunday during the first week of June, that person or persons may not later register for a space at the end of Second Street from Monday through Thursday during the second week of June.

The Task Force carefully considered the testimony of many witnesses that spaces should be assigned at random by a lottery and that a rotation system should be implemented. The Task Force concluded, however, that street performers should be allowed to exercise some control over their location and that it would be unfair to assign a street performer at random to a location removed from the busiest areas of the Boardwalk when spaces are available in these areas. The Task Force believes a requirement that a performer not be located at the same street end on successive weeks should be sufficient to meet the goal of rotating performers.

3. Use Of The Spaces

The Task Force recommends that expressive activity be permitted in the spaces, subject to specific rules and regulations. The rules and regulations should be included in the City Ordinance, and the Task Force recommends that these rules include a prohibition on physically affixing props to the Boardwalk surface and a height limitation of four feet on props. In addition, a person utilizing a space should not be permitted to rope off or demarcate the spaces in any way. Persons may not leave equipment or props unattended in the space for more than 15 minutes. Further, the Town should only permit the spaces to be utilized at specified times. The Task Force recommends that the specified times be between 10:00 a.m. and 12:00 a.m. during the week, and between 10:00 a.m. and 1:00 a.m. on weekends. ~~The~~ On any day of the week, however, the creation or amplification of music and amplification of sound, ~~however, of whatever nature~~ should not be permitted after ~~10~~11:00 p.m. ~~during the week, and~~ The Task Force recognizes 11:00 p.m. as an appropriate time to cease the creation or amplification of music and amplification of sound because outdoor entertainment by restaurants and businesses on ~~weekends. the Boardwalk is not permitted after 11:00 p.m.~~ Furthermore, the Task Force recognizes that law enforcement is authorized to curtail unreasonably loud noise pursuant to the Town's existing noise ordinance. Code of the Town of Ocean City, Maryland Sect. 30-271.

The Task Force heard testimony regarding pole dancing on the Boardwalk. Under certain circumstances, dancing can constitute expressive activity entitled to protection under the First Amendment. Dancing is not entitled to such a protection, particularly in a public place such as the Boardwalk, where it involves nudity, pornography or obscenity. Section 62-5 of the Ocean City Code currently prohibits nudity, pornography and obscenity on the Boardwalk. Accordingly, the Task Force believes that it must be left to

law enforcement to determine whether the given conduct involves nudity, pornography, or obscenity.

The Task Force also heard testimony that crowds gathered around street performers obstruct traffic on the Boardwalk and access to stores and restaurants. The Task Force believes the spaces in the heavily traveled areas of the Boardwalk can be located and configured in such a way as to alleviate undue congestion. Nonetheless, the Task Force recognizes that law enforcement has authority to prevent the obstruction of a public way under the Maryland Code of Criminal Law § 10-201(c)(1), which provides that a person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place. *Id.*

4. Boardwalk Issues To Be Addressed By Requiring Registration For Spaces In The Most Congested Areas On The Boardwalk

The Task Force believes that the recommendations described above regarding the regulation of expressive activity on the Boardwalk will address a number of issues raised by witnesses who testified before the Task Force. First, City police officials, particularly Lt. Pacini, noted that, in the most congested areas of the Boardwalk, street performers and individuals selling expressive material generate crowds which block (1) the flow of traffic on the Boardwalk, (2) the tram pathway, (3) access to retail stores and restaurants on the Boardwalk, (4) fire hydrants, and (5) public benches. This situation causes harm to the retail stores and restaurants and results in conflict between street performers and retail merchants and restaurant owners. The congestion also makes the Boardwalk experience less enjoyable for the public and creates safety issues when individuals or props are in the pathway of the tram and block fire hydrants. It could be suggested that police already have authority to disperse crowds where there is a dangerous situation, traffic is hindered or access to a store or restaurant is blocked. Police action in this

situation, however, is not preferable. It causes disruption to the activities of the performers and merchants and makes the experience of members of the public less pleasant. Further, such action by the police increases the likelihood of a confrontation between a member of the public and the police that would otherwise be completely avoidable. By requiring the street performers and persons selling expressive material to conduct their activities within the designated spaces in the congested areas of the Boardwalk, the congestion problem can largely be ameliorated and a better situation can be created for street performers, merchants and members of the public seeking to enjoy the Boardwalk.

Additionally, the Task Force heard evidence that the current law authorizing expressive activity generally on the Boardwalk has resulted in retail store owners violating the spirit, if not the letter, of zoning laws by locating sales or service facilities on the Boardwalk itself in front of their stores. A requirement that expressive activity be conducted in designated spaces, which will not be located in front of retail stores, would eliminate the problem of retail store owners expanding onto the surface area of the Boardwalk.

Furthermore, under existing law, police officers are required to make immediate judgments, many times in the midst of a crowd, as to whether sales or service activity is expressive activity protected by the First Amendment. Police officers often erred on the side of permitting the activity, thus undermining the Town's policy of not permitting non-expressive, commercial activity on the Boardwalk and exacerbating the general congestion and other problems caused by commercial activity on the Boardwalk. Further, uncertainty on the part of potential performers as to whether their activity constitutes protected expressive activity may deter the individuals from engaging in expressive activity. The Task Force's recommendation that persons be required to

register for spaces in the congested areas and briefly describe the nature and scope of their activities would address these issues by having a Town official determine whether the proposed activity is permissible, with time for reflection (and, if necessary, an opportunity to consult the ~~Town Attorney~~City Solicitor). Most importantly, this procedure would eliminate the need for police officers having to make this legal judgment in the midst of a large and busy crowd where there is the potential for miscommunication and conflict.

Another problem identified by testimony before the Task Force was that street performers sometimes occupy public benches, construct platforms that are affixed to the Boardwalk, utilize props that obstruct the view of the beach and ocean, and obstruct access to fire hydrants. The Task Force's recommendation that the Town establish spaces in the congested areas would prevent performers from occupying public benches and blocking fire hydrants. Outside of the congested areas, these issues can more easily be addressed on a case by case basis. Further, the Task Force recommends that the Town place height limitations on props that can be utilized by performers and prohibit performers from affixing props to the Boardwalk itself. These restrictions should prevent performers from damaging the Boardwalk by affixing props and prevent them from blocking the view of the beach and ocean.

Additionally, the Task Force received evidence that the fumes from spray paint utilized by performers or persons selling expressive material can be annoying, uncomfortable and potentially unhealthy. The Task Force, however, decided not to recommend that spray painting be prohibited on the Boardwalk. The Task Force found that spray painting is central to activity that is expressive in nature and provides enjoyment to visitors to the Boardwalk. The Task Force believes that its recommendations on the establishment and use of spaces in the congested areas strikes

the correct balance on this issue. By locating the spaces away from store fronts and restaurants, the Town would reduce the extent to which people will be exposed to the fumes. Further, by prohibiting performers and persons selling expressive material from registering for a space on the same street end in ~~two successive weeks~~consecutive performance periods, the recommendation would eliminate the possibility that certain areas will be continuously exposed to the fumes for the entire season.

Furthermore, certain witnesses expressed concern that individuals dressing as costumed characters were able to conceal their identity and may interact in an inappropriate manner with children. The Task Force did not receive any evidence that such conduct had actually occurred, but finds that the likelihood that such an event might occur would be reduced if costumed characters were required to register for a space and identify themselves in the congested areas. This procedure would deter inappropriate conduct and would enable law enforcement authorities to quickly and effectively investigate complaints of misconduct by costumed characters. Outside of the congested areas the potential for misconduct by costumed characters is less acute and can be more easily addressed on a case by case basis.

5. The Legal Validity Of The Task Force Recommendations

The Task Force has concluded that the recommendation that persons be required to conduct expressive activity in designated spaces in the congested areas, and be subject to delineated rules and regulations, would be consistent with the analysis of district court opinions governing the Town’s Boardwalk and First Amendment principles. As explained in detail above, the government may impose reasonable “time, place, and manner” restrictions on speech provided that the restrictions “(1) are “justified without reference to the content of the regulated speech”; (2) are “narrowly tailored to serve a significant governmental interest”; and (3) “leave open ample alternative channels for

communication of the information” that the speaker wishes to communicate. *Clark, supra*, at 293.

Further, the requirement that a restriction be “narrowly tailored to serve a significant governmental objective” means that the governmental goal would be achieved less effectively without the regulation. *Ward, supra*, at 798. The restriction need not be the least restrictive means available for achieving the objective, but it must not be substantially broader than necessary. *Id.* at 800. A restriction may be too broad if there are numerous and obvious less burdensome and more precise alternatives. *Id.* at 797. Whether there are “ample alternative channels for communication” is a very specific determination that will vary for each situation. The key question is whether the speaker’s ability to communicate effectively and reach the intended audience is threatened by the government regulation. *Id.* at 802; *see also, Heffron, supra*, at 655.

In *Dowd*, the district court applied these rules to uphold a City of Los Angeles ordinance applicable to Venice Beach. *Dowd, supra*, at 22. The ordinance assigned performers to specific spaces on the boardwalk for the purpose of distributing limited space on the boardwalk and preventing congestion. *Id.* at 8. The city argued that the assignment of spaces provided a mechanism for police officers to resolve disputes over space and to allocate space in a neutral manner. *Id.* The assignment of spaces – the city contended – also expanded the pool of potential performers who might not assert themselves on a first come, first served basis or be willing to arrive at the crack of dawn to reserve a space. *Id.* at 8-9. The city also imposed a height restriction on the use of props to no more than four feet above the ground. *Id.* at 12-13. The district court found that, while the restrictions did have some tendency to limit speech or expressive activity, it was not substantially overbroad and was geared to addressing important governmental interests in the safe and pleasant use of the boardwalk. *Id.* at 13.

The Task Force believes that the district court's reasoning in *Dowd* is persuasive and applicable to the recommendations that it has made. Further, the Task Force believes that it is important that the Town has now had the benefit of three years of operating under the terms of the existing Ordinance as modified by the district court. This experience, as explained by testimony before the Task Force, has formed the basis for the limited and tailored new regulations that the Task Force recommends. In *Reynolds*, the Fourth Circuit considered a law that banned panhandling on highway medians imposed by a county ordinance. *Reynolds, supra*, at 1. The Fourth Circuit ruled that the County could not rely on common sense and logic alone to prove that such activity was dangerous and that a ban was necessary to address the conduct. *Id.* at 6. Rather, the County had to demonstrate that it had tried less restrictive methods, such as prosecuting individuals who actually obstructed traffic. *Id.* The Court remanded the case to the district court to give the County an opportunity to gather and present such evidence. *Id.* at 8.

In the present case, the Town has had three years of experience with permitting expressive activity on street ends throughout the Boardwalk, except at the end of N. Division Street. This experience has brought to light certain specific issues created by such activity, but the Task Force believes that these issues can be addressed by the regulations it recommends with minimal impact on expressive activity. Indeed, as explained above, some of the recommendations should make it easier and safer to engage in expressive activity in the congested and busy environment of the Ocean City Boardwalk during the summer season.

C. Tables, Generators And Other Materials Used By Street Vendors And Performers

Many people have expressed concern that street performers sometimes appropriate what are meant to be public spaces and accommodations (*e.g.*, benches) and use them either to store their belongings or as part of their act. The Task Force believes that, by granting performers a designated space in the congested areas, this problem will be for the most part solved. It is expected that performers will confine themselves to the designated areas, which will exclude all public accommodations.

Within their designated spaces, performers may use tables, signs and other equipment that is not affixed to the Boardwalk as they deem necessary. The Town, however, wants to ensure the safety and aesthetic attractiveness of the Boardwalk. Many witnesses expressed concerns about generators on the Boardwalk for reasons having to do with both noise and safety. David Hartley, Ocean City's Fire Marshall, testified that generators pose potential safety risks because they produce exhaust and heat up, potentially causing burns. In particular, he thought fueling and re-fueling generators on the Boardwalk was dangerous.

Because generators pose a fire hazard and are unsafe, noisy and produce exhaust fumes, the Task Force recommends that they be banned in the vending/performance spaces. In addition, the Town tries to maintain an aesthetic standard and to reduce blight and visual clutter by enforcing its zoning laws, which require merchants to limit their outdoor displays on the Boardwalk. The Town's interests in maintaining the attractiveness and visual appeal of the Boardwalk can best be accomplished by requiring street vendors to observe some of the same restrictions with which merchants must comply, especially when it comes to outdoor signs and displays. Accordingly, we recommend that street performers and vendors, like merchants, observe prohibitions on

any display of more than four feet in height. Ocean City, MD Code of Ordinances, Sec. 110-884.

Restrictions on the types and size of equipment allowed in a public space that are content-neutral – that is, that are not aimed at repressing any particular speech because of its content – raise no constitutional concerns as long as they are reasonably related to furthering a legitimate government interest. Here, the interests advanced by the regulations are health and safety, and prevention of visual blight.

D. Closing Of Dorchester Street And Additional Streets To Performers And Street Vendors

The Task Force heard testimony from Lt. Ward Kovacs, a 33-year veteran of the Ocean City Beach Patrol who has been stationed at the Boardwalk for 30 of those years. Lt. Kovacs testified that the current system for getting onto the beach in case of emergencies presents a severe safety hazard.

Frequently, when Beach Patrol vehicles need to cross the Boardwalk, they have to wait for the crowds that are assembled to watch the street performers there make way for the vehicles, and have to wait for the performers or vendors (some of whom have elaborate booths, signs, stages or other equipment) to dismantle their set-up so that the Beach Patrol vehicles can pass. Sometimes, the hold-up can cause dangerous delays. Lt. Kovacs described various incidents that occurred last summer when the Beach Patrol tried to reach drowning victims and the crowds caused “life-threatening delays.” (February 9, 2015 Hearing Tr. at 41:16.) On one occasion, a street performer set up at the corner of Dorchester actually refused to move out of the way of the emergency vehicle, which carries on board a defibrillator – the only one available on the Beach. (*Id.* at 42.) The performer let the vehicle through only after Lt. Pacini, of the Ocean City

Police Department, had been called and came to the scene. (*Id.* at 43.) On two other occasions, the delay in crossing the Boardwalk meant that one rescue officer struggled alone in the surf with a drowning victim until a second rescuer, stuck on the Boardwalk, could get there to help him. (*Id.* at 44.)

In order to avoid these life-threatening incidents, Lt. Kovacs requested, and this Task Force recommends, that Dorchester Street be closed off to street performers, thereby facilitating emergency access to the Beach.⁴

~~Additionally, the Beach Patrol uses ATVs with low pressure tires for emergencies. *Id.* at 39. The Patrol stores the majority of these vehicles on Dorchester Street. *Id.* The ATVs cannot lawfully reach N. Division Street by state highways like Baltimore Avenue, which provides an appropriate path under urgent circumstances. This problem is avoided by affording emergency vehicle access to the Boardwalk via Dorchester Street, a city thoroughfare not subject to the state highway proscription.~~

In order to ensure that emergency vehicles are able to access the Beach as quickly and efficiently as possible, the Task Force further recognizes the need for emergency access at each “at grade” Boardwalk intersection. At each of these “at grade” locations, the streets meet the Boardwalk at a level intersection, thereby allowing emergency vehicles access to the Beach expeditiously and without having to travel to N. Division Street or Dorchester Street. Therefore, to facilitate the ease of emergency access, the Task Force recommends that, in addition to N. Division Street and Dorchester Street,

⁴Additionally, the Beach Patrol uses ATVs with low pressure tires for emergencies. (February 9, 2015 Hearing Tr. at 39.) The Patrol stores the majority of these vehicles on Dorchester Street. (*Id.*) The ATVs cannot lawfully reach N. Division Street by state highways like Baltimore Avenue, which provides an appropriate path under urgent circumstances. This problem is avoided by affording emergency vehicle access to the Boardwalk via Dorchester Street, a city thoroughfare not subject to the state highway proscription.

performers be prohibited from conducting expressive activity at the ends of the following streets: South First Street, Worcester Street, Third Street, Fifth Street, Seventh Street, Surf Avenue, and Ninth Street. North of Ninth Street, the Task Force recommends that expressive activity by performers on every street end between and including 15th Street and 27th Street be prohibited in consideration of the reasons provided above.

E. Signs Disassociating The Town From Street Performers

The Task Force heard testimony that many tourists assume that the Town of Ocean City has vetted, endorsed and assumed responsibility for street performers. It has been suggested that this perception could lead people to trust the performers more and could, for example, make some people feel more at ease about their children engaging with costumed characters. Such a misperception could lead to a tourist being defrauded or injured by a street performer. In order to help forestall ~~any~~ such problems, the Task Force recommends that the Town ~~post and prominently display signs in locations near~~make use of the street ends where existing LED monitors along the performers are located, Boardwalk, which should be used to deliver a message stating that the street performers are not employees of the Town, nor are they affiliated with the Town in any representative or official capacity. Additionally, the Task Force recommends that the Town deliver the same message through the media, by way of example, and not limitation, the local Ocean City public information (or “resort”) television channel, as well as the official “Ocean City, MD” website sponsored by the Town’s Department of Tourism.

F. Use Of The Amphitheater On Caroline Street

~~Certain performers attract bigger crowds to what the performers call “circle shows.” In order to afford these performers a suitable space to house these larger crowds,~~

~~the Task Force recommends that the Town make the Caroline Street Amphitheater, which is often unused, available to them. The mechanics of how the Amphitheater ultimately will be made available (i.e., whether by a first come sign up system, or through some other equitable means) will depend on the number of performers who vie for the space. The Town should consider promoting these circle shows, without endorsing them as acts hired by the Town.~~ The Task Force recommends that the Town prohibit performers from utilizing the Caroline Street Amphitheater as a performance area.

G. Enforcement Procedures

The Town of Ocean City, Maryland is a municipal corporation organized under Article XI-E of the Maryland Constitution. As such, the legislative body of the Town may enact and adopt ordinances necessary to exercise the authority of the municipality. Md. Code, Local Gov't § 4-103(b)(3); § 5-203. These ordinances may provide that a violation of the Town's ordinances will be considered a civil offense or "municipal infraction." Md. Code, Local Gov't § 6-102. Lastly, a fine not to exceed \$1,000 may be imposed for each municipal infraction. *Id.*

As a municipal corporation, the Town has adopted a Charter containing the governing laws relating to the incorporation, organization, government, and affairs of the Town. The Charter may be found at Sect. C-101, *et seq.* of the Code of the Town of Ocean City, Maryland ("Ocean City Charter"). With respect to enforcement, the Charter recognizes that the Mayor and City Council of Ocean City may provide for the enforcement of this Charter and of any ordinance or regulation made thereunder. Ocean City Charter § C-416. In particular, the Charter provides that the Mayor and City Council are empowered to provide civil penalties for any violations of the Charter or related ordinance or regulation. *Id.*

Accordingly, under the Maryland Code for Local Government and the Ocean City Charter, the City Council of Ocean City may enact a civil enforcement statute that allows police officers to issue fines not to exceed \$1,000 for infractions of an ordinance regulating activity on the Boardwalk. Currently, Sec. 62-5 of the Code of Ordinances (“the Code”) describes the prohibited acts on the Boardwalk, and includes an enforcement provision which states that any individual who violates Sec. 62-3, 62-4, and 62-5 of the Code shall be deemed to have committed a municipal infraction and shall be subject to the penalty provisions for such offenses found in Sect. 1-8(c) of the Code. The Task Force recommends that § 62-5 be amended to subject an individual to a fine of no less than \$25.00 and no more than \$1,000.00 if the person is found to have violated the provisions governing the Boardwalk which have been recommended by the Task Force.

Additionally, the Task Force recommends that a police officer have authority to evict a performer from a space for 24 hours if the police officer determines that the performer is utilizing the space in violation of the Town Code.

[Signature Lines]

H. Reconvening Of Task Force

Finally, Task Force members believe that the process of sitting down together, identifying concerns and attempting to craft solutions that would be acceptable to all constituencies was a useful one. The Task Force recommends, therefore, that the City Council cause the Task Force to reconvene sometime during the summer when changes to Boardwalk regulation have been implemented and there has been time to see how those changes are working.

D — R — A — F — T

Greg Shockley, Chairman

DISSENT

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March 30, 2015

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Dear Guy R. Ayres III:

I must dissent against portions of the proposed regulations. The proposed draft of recommendations blatantly ignores factual data given and presented by various public safety personnel. Below is a summary of the regulation changes I must dissent from.

Ban on Generators:

The first proposed recommendation that I must dissent from is the ban on generators. The proposed change was not in accordance with the testimony given by Fire Marshall David Hartley. During his testimony, Mr. Hartley clearly stated the following, which shows his intent was to ban the fueling and refueling of generators on the boardwalk rather than completely banning generators:

“If you use a generator in accordance with the manufacturer’s recommendations they are in fact safe” (Betz, Court Reporter, 2015b, p. 5, line 14-16)

“In particular, in talking about the generators, those that are powered by gas, the biggest concern I have is not so much the generator itself. If you use a generator in accordance with the manufacturer’s recommendations they are in fact safe. However, in a place that’s so heavily populated, dense with people, my concern is more with their fueling and refueling” (Betz, Court Reporter, 2015b, p. 5, lines 17-18)

“I’m not saying to prohibit the use of generators...but for me I want more safe handling of the flammable liquid and the fuel and refueling” (Betz, Court Reporter, 2015b, p. 6, lines 3-6)

“What I’m basically suggesting is getting the generator off the Boardwalk to refuel it...” (Betz, Court Reporter, 2015b, p. 8-9, lines 21-5).

“...Manufactures specifically put out their recommendations on how to use their equipment, and if they do in accordance with their recommendations they do, like I said earlier, I feel like they’re safe” (Betz, Court Reporter, 2015b, p. 6, lines 8-13).

Not only does a ban of generators affect some performers from communicating effectively at night, but is overbroad and ignores the more precise and less restrictive option of banning only fueling of a generator on the boardwalk.

Ban on Ropes and Spot Size:

The second proposed recommendation that I must dissent from is the ban on ropes and spot size. Limiting a performer’s size may inadvertently cause a situation in which the performer cannot speak or perform effectively because his/her crowd is too close for their type of performance. Such as limiting a dancer, acrobat, or juggler to a small size will hinder their ability to speak publically and potentially cause safety concerns. This serves no substantial governmental interest of safety especially when performers are allowed to implement what they know is a safe performance size for their act. In conjunction, the banning of ropes will greatly reduce and/or remove the ability of some performers to control their crowds. This ban will not only be counterproductive, concerning boardwalk blockage caused by crowds, but it may unintentionally cause larger or more frequent blockages to occur. This purely comes from experience as a performer and knowing that a simple rope laying on the ground or even slightly elevated allows a performer to control his/her crowd into a smaller condensed area. Without a rope to signify a place for spectators to approach they will often, if not always, maintain a vast distance between them and the performer, which is counterproductive to the governments interest in maintaining free movement of pedestrian foot traffic. Attached to this dissent letter are two images that will show the differences between a performer that uses a simple rope versus one that does not use a rope to give the crowd a visual reference on how close to the performer they can be. The first image is of one that uses no rope during his performance. This

image was submitted by Lieutenant Mark Pacini during his presentation. The second image is of a performer that uses a rope as a visual cue to tourists so that they know they can be close. This image was submitted by Mr. Ward Kovacs.

Removal of 3rd Street from Potential Performer Area:

The third proposed recommendation that I must dissent from is the proposed removal of 3rd Street from a potential performer area. Ward Kovacs of the Ocean City Beach Patrol testified on removing Dorchester Street as a performance area. I fully agree that Dorchester Street should be removed, but my fellow task force members voted also to amend the draft task force proposal to include 3rd Street along with Dorchester Street. Mr. Kovacs never once mentioned 3rd Street or any other street, other than Dorchester and North Division Street as safety access points. The following statements made by Mr. Kovacs clearly show that the beach patrol does not access the boardwalk via 3rd Street or any other street, other than Dorchester Street.

“It’s unsafe for our ATV’s to drive down Baltimore Avenue. There’s no protection on the side of that. There’s no lights on the side of it for working late in the afternoon. Also, the tire pressure that we keep in those to use operationally on the sand is so low that any type of quick turning that you try to do on a paved surface can cause it to roll over. Also, it’s illegal to use them on Baltimore Avenue for transit. So we just, our only access there is to go straight across at Dorchester Street. So to try and alter that course and go up North Division Street, I mean to go from Dorchester to North Division on Baltimore Avenue really isn’t a safe option for us. And a lot of times with the traffic that we have down there during the day even to have to take an SUV or pickup truck down to North Division Street and fight through that traffic to get there, again you’re delaying the response when someone might be trapped at the end of a rip current or looking at their child laying on the beach that needs defibrillation with the AED that can’t get there in time. Again, Dorchester Street really is going to be our option going into the future, and I thank the Mayor and Council for agreeing to build a new building there for us, but what that means is we’re going to be there for a while. And it’s also the police departments, or the fire department’s station, too, is on Dorchester Street. ” (Betz, Court Reporter, 2015a, p. 45-46, lines 7-14).

During my litigation, Fire Chief Larmore testified in court, that North Division Street is the only street end that can accommodate the fire departments largest vehicles and is the primary and most efficient means of egress and ingress to the boardwalk. Chief Larmore claimed that North Division Street was the primary access route to the boardwalk for as long as he can remember (*Mark Chase v. Town of Ocean City*, n.d., slip op. at 8). Even during my litigation and observations of fire and safety equipment, 3rd Street was never considered to be a main or viable access route to the boardwalk for emergency vehicles.

Registration and Spot Assignment:

The final aspect I must dissent from is the registration and spot assignment. This issue arose because store owners abused and continued to abuse the spirit of street performing for the sole purpose of their profit and not for expressive means. Permits for single speakers have largely been ruled unconstitutional and during the Supreme Court case *Watchtower Bible and Tract Society of New York vs. Village of Stratton*, the Supreme Court said these powerful words:

“It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor’s office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition” (2002, slip op. at III).

To prove the point that street performers are not the core issue and should not be subjected to a permitting system that has no real governmental interest, I will rely on Lieutenant Pacini’s experience and his exact words:

“We can review other areas but, you know, I always get an education from Mr. Ayres about that. You know, just because they’re doing it in New York City or Fort Meyers Beach doesn’t necessarily say we can do it here. I’ll give you an example. Fort Meyers, actually one of our performers on the Boardwalk performs in Fort Meyers and on his display is his Fort Meyers permit. I can pretty much tell you nationwide you don’t need a permit to perform.

Several other jurisdictions have said you don't need a permit to perform. And we can't require it. Ultimately I think we need an ordinance to hit several of the areas that I stated. And this may cause controversy but, you know, the merchants that are conducting business on the Boardwalk as street performers need to be dealt with accordingly" (Betz, Court Reporter, 2015a, p. 33-34, lines 18-8).

"I've dealt with a couple. I've cited a couple. I've also gone the route of going after the business license. I've done that with one pizza business in Town who continually broke City ordinance. But that's not an easy task. That's a lot of work. And then eventually it's got to go before Mr. Recor and he has to have a hearing and then we gotta make a decision. So I guess the point I'm making is, you know, in other jurisdictions in the nation the Chief of Police says you're closed. Now, that might be too much power for one person or run it through the Mayor or run it through the Council, but we don't have all summer to get it done. Because once one merchant does it, one or two things happens. The others follow suit or the others complain that they're not being treated fairly" (Betz, Court Reporter, 2015a, p. 35-36, lines 13-9).

"In March, I believe, I'm sorry, on May 24th we had one business owner that was extremely upset at those henna tattoo stands directly across from their business and they schemed all winter, as far as I'm concerned, and they showed those guys. The first day of Memorial Day last year they put their own stand out there and they moved their stand, the actual performer, they moved their stand 3 feet and they proceeded to threaten the performer. "I'll kill you." And when we talk about crime and the fear of crime, I wasn't too happy being in charge of that Boardwalk to hear some merchant threaten a performer. Because what's that do? That just permeates, that rides all the way up the Boardwalk and that's what lands us in the newspaper. That's what gets people talking about how the Boardwalk is so unsafe because we got merchants out there threatening performers so they can stick their own stand out there and make money" (Betz, Court Reporter, 2015a, p. 36-37, lines 17-15).

“The performers that I encounter follow the law. It’s very easy. This is what you can do and what you cannot do. Here it is in writing. And I issued very few performers last year citations” (Betz, Court Reporter, 2015a, p. 29, lines 3-7).

The permitting system proposed serves no governmental interest and serves only a store owner’s interest of limiting and/or removing speech they deem subpar for their “area”. The First Amendment is there to protect speech you do not wish to hear. The proposed registration is against only performers and mainly targeted at musicians. This proposed registration would potentially be in violation of the First (1st) and Fourteenth (14th) Amendments as well as create an unnecessary burden on city hall. Historically the courts have found permits for single speakers as unconstitutional. Historically performers in Ocean City have a proven track record that “first come first serve” has worked best when acquiring spaces. With virtually no law enforcement or governmental burden when seeking out a space to perform. Registration and assignment of performance locations can cause performers that do not work well together to be on the same street. This will not only cause a burden on the speakers’ ability to speak effectively but may also have the unintended consequences of personality clashes which largely have been avoided. Lieutenant Pacini emphasized during his testimony, that performers largely follow the law and the main guidance he is seeking was a clarification of what constitutes a performer and what is permissible. To achieve Lieutenant Pacini’s wishes, we would not have to have a permit system nor assigned spaces, but rather a clear written explanation of what constitutes a performer/performance and protected speech. I feel this was obtained with the “performer” explanation of the proposed draft, which I am not dissenting against.

Conclusion:

In conclusion, limiting performance area size, requiring a registration, assigning spots, banning rope, and banning generators, creates an unnecessary burden not only on performers, but also for Ocean City’s government. In my opinion, the requirement of a registration holds no governmental interest other than a forced rotation, which serves only in the interest of store owners. The proposed regulations that I am dissenting from, that my fellow task members voted to adopt as our proposal, clearly violates the spirit of our First Constitutional Amendment which protects speech that no one wants to hear or see, as well as creates an unneeded burden and potential elimination of spontaneous speech in areas of the Boardwalk where the speech is most effective.

Guy R. Ayres III
March 30, 2015
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Sincerely,

Mark Chase



Picture A: Pacini, 2014



Picture B: Kovacs, N.d.

Guy R. Ayres III

March 30, 2015

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