

ORDINANCE NO. 1490

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 5.50 ENTITLED "PARADES, ATHLETIC EVENTS AND OTHER SPECIAL EVENTS" TO THE OAK HARBOR MUNICIPAL CODE AND AMENDING OAK HARBOR MUNICIPAL CODE SECTION 6.14.100 RELATING TO MEETINGS IN CITY PARKS AND AMENDING OAK HARBOR MUNICIPAL CODE SECTION 6.14.080 RELATING TO SOLICITING AND SOUND TRUCKS

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 5.50 entitled "Parades, Athletic Events and Other Special Events" to the Oak Harbor Municipal Code which shall have the following Sections:

Sections:

- 5.50.010 Definitions.
- 5.50.020 Permits Required.
- 5.50.030 Grounds for Denial.
- 5.50.040 Permit Conditions.
- 5.50.050 Appeal Procedures.
- 5.50.060 Exemptions from Fees, Indemnification Agreement and Insurance.
- 5.50.070 Indemnification Agreement.
- 5.50.080 Insurance.
- 5.50.090 Fees for City Services.
- 5.50.100 Cleanup Deposits.
- 5.50.110 Revocation of Permits.
- 5.50.120 Violation - Penalty.
- 5.50.130 Savings Clause.

Section Two. There is hereby added a new Section 5.50.010 entitled "Definitions" to the Oak Harbor Municipal Code to read as follows:

5.50.010 Definitions.

- (1) "Special Events" include any event which is to be conducted on public property or on a public right-of-way; and, also, any event held on private property which would have a direct significant impact on traffic congestion; or traffic flow to and from the event over public streets or rights-of-way; or which would significantly impact public streets or rights-of-way near the event; or which would significantly impact the need for City-provided emergency services, such as police, fire or medical aid. It is presumed that any event on private property which involves an open invitation to the public to attend or events where the attendance is by private invitation of 100 or more people are each presumed to be an event that will have a direct significant impact on the public streets, rights-of-way or emergency services. Special events might include, but are not limited

to, fun runs, roadway foot races, fund raising walks, auctions, bike-a-thons, parades, carnivals, shows, or inhabitations, filming/movie events, circuses, block parties and fairs.

- (2) “Special Events protected under the First and Fourteenth Amendments” include any event involving political or religious activity intended primarily for the communication or expression of ideas.
- (3) “Use” shall mean to construct, erect, or maintain in, on, over or under any street, right-of-way, park or other public place, any building, structure, sign, equipment or scaffolding, to deface any public right-of-way by painting, spraying or writing on the surface thereof, or to otherwise occupy in such a manner as to obstruct the normal public use of any public street, right-of-way, park or other public place within the City, including a use related to special events.

Section Three. There is hereby added a new Section 5.50.020 entitled "Permits Required" to the Oak Harbor Municipal Code to read as follows:

5.50.020 Permits Required.

- (1) In order to preserve the general health, welfare and safety of all the public, a special event permit or authorization from the City is required for any event in a park, public place or on private property where it will significantly impact public sidewalks or roadways. Such special event permit shall be in addition to any street or park use, or other regular permits as may be required by ordinance.
- (2) When such an event will be an exercise of rights protected by the First and Fourteenth Amendments to the United States Constitution, the application shall be processed promptly, without charging a fee for political or religious activities or imposing terms or conditions that infringe constitutional freedoms, and in a manner that respects the liberty of applicants and the public.
- (3) Except as specified in subsection (9) below, a special event permit is **not** required for the following:
 - (a) Parades, athletic events or other special events that occur exclusively on City property and are sponsored or conducted in full by the City of Oak Harbor.
 - (b) Funeral and wedding processions.
 - (c) Groups required by law to be so assembled.
 - (d) Gatherings of 50 or fewer people in a City park, unless merchandise or services are offered for sale or trade.
 - (e) Temporary sales conducted by businesses, such as holiday sales, grand opening sales, or anniversary sales.

- (f) Garage sales and rummage sales.
 - (g) The exhibition of films or motion pictures.
 - (h) Other similar events and activities which do not directly affect or use City services or property.
- (4) Any person desiring to sponsor a parade, athletic event or special event shall be encouraged to apply for a special event permit by filing an application with the City Clerk at least sixty (60) days prior to the date on which the event is to occur.
- (5) The City Clerk shall transmit copies of the application to the City Administrator or her/his designated permit coordinator, Director of Public Works, Police Chief, City Engineer and the Fire Chief for review.
- (6) The City Administrator or her/his designee shall coordinate review of the special events permit application and approve, deny or approve the same subject to conditions.
- (7) Fees required to be paid under this ordinance shall be paid to the Finance Department and proof of payment shall be provided to the City Administrator.
- (8) Waiver of Application Deadline: Upon a showing of good cause or at the discretion of the City, the City shall consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain police and other City services for the event. Good cause can be demonstrated by the applicant showing that the circumstance that gave rise to the permit application did not reasonably allow the participants to file within the time prescribed, and the event is for the purpose of exercising rights under the First and/or Fourteenth Amendments of the United States Constitution.
- (9) It is unlawful as part of or related to any special event to construct, erect, or maintain in, on, over or under any street, right-of-way, park or other public place, any building, structure, sign, equipment or scaffolding, to deface any public right-of-way by painting, spraying or writing on the surface thereof, or to otherwise occupy in such a manner as to obstruct the normal public use of any public street, right-of-way, park or other public place within the City, without obtaining prior to such special event a permit under this ordinance and then only if the specific identified act in this has been so authorized and all other necessary permits have been obtained.

Section Four. There is hereby added a new Section 5.50.030 entitled "Grounds for Denial"

5.50.030 Grounds for Denial.

- (1) The City may deny an application for a special event permit if:
 - (a) The applicant provides false or misleading information; the applicant fails to complete the application or to supply other required information or documents; or the applicant declares or shows an unwillingness or inability to comply with the reasonable terms or conditions contained in the proposed permit;
 - (b) The proposed event would conflict with another proximate event, interfere with construction or maintenance work in the immediate vicinity, or unreasonably infringe upon the rights of abutting property; or
 - (c) The proposed event would unreasonably disrupt the orderly or safe circulation of traffic as would present an unreasonable risk of injury or damage to the public.
- (2) In the event subsection (b) or (c) above applies, the City shall offer the applicant the opportunity to submit an alternative date or place for the proposed event before denying the application.

Section Five. There is hereby added a new Section 5.50.040 entitled "Permit Conditions" to the Oak Harbor Municipal Code to read as follows:

5.50.040 Permit Conditions.

- (1) The City may condition the issuance of a special events permit by imposing reasonable requirements concerning the time, place and manner of the event, and such requirements as are necessary to protect the safety and rights of persons and property, and the control of traffic.
- (2) The following conditions apply to all special events permits:
 - (a) Alteration of the time, place and manner of the event proposed on the event application.
 - (b) Conditions concerning the area of assembly and disbanding of an event occurring along a route.
 - (c) Conditions concerning accommodation of pedestrians or vehicular traffic, including restricting the event to only a portion of the street or rights-of-way.
- (3) Conditions on special events permits not protected under the First and Fourteenth Amendments of the U.S. Constitution include, but are not limited to:

- (a) Requirements for the use of traffic cones or barricades.
- (b) Requirements for the provision of first aid or sanitary facilities.
- (c) Requirements for use of event monitors and providing notice of permit conditions to event participants.
- (d) Restrictions on the number and type of vehicles, animals or structures at the event, and inspection and approval of floats, structures, and decorated vehicles for fire safety.
- (e) Compliance with animal protection ordinances and laws.
- (f) Requirements for use of garbage containers, cleanup, and restoration of City property.
- (g) Restrictions on the use of amplified sound and compliance with noise ordinance, regulations and laws.
- (h) Notice to residents and/or businesses regarding any activity which would require a street closure.
- (i) Restrictions on the sale and/or consumption of alcohol.
- (j) Elimination of an activity which cannot be mitigated to a point as to ensure public safety and welfare, or which causes undue liability to the City.
- (k) Requirements regarding the use of City personnel and equipment.
- (l) Compliance with any other applicable federal, state or local law or regulation.

Section Six. There is hereby added a new Section 5.50.050 entitled "Appeal Procedures" to the Oak Harbor Municipal Code to read as follows:

5.50.050 Appeal Procedures.

- (1) The applicant shall have the right to appeal the denial of a permit or a permit condition. The applicant shall also have the right to appeal the amount of fees or cleanup deposits imposed pursuant to OHMC Section 5.50.100, or a determination by the City that the applicant's Certificate of Insurance does not comply with the requirements specified in OHMC Section 5.50.080. A written Notice of Appeal shall be filed within three (3) business days after receipt or personal delivery of a notice of denial or permit conditions from the City. The written Notice of Appeal shall set forth the specific grounds for the appeal and attach any relevant documents for consideration. The City Council shall hear the appeal on the record provided from the designated City official and upon public comment given at the scheduled hearing before the Council. The hearing shall be

scheduled no later than thirty (30) days after receipt of a timely and proper Notice of Appeal. Public comment at the appeal hearing shall be limited to three (3) minutes per individual and fifteen (15) minutes each for appellant and City respondent. The decision of the City Council is final.

- (2) If there is insufficient time for a timely appeal to be heard by the City Council prior to the date on which the event is scheduled, the applicant may, at its own option, request that the designated City official schedule the appeal before the City Administrator. City Administrator or designee shall hold a hearing no later than five (5) business days after the filing of the appeal and will render a decision no later than one (1) business day after hearing the appeal. If the appeal is requested and heard before the City Administrator, the City Administrator's decision is final. There is no further appeal to the City Council.

Section Seven. There is hereby added a new Section 5.50.060 entitled "Exemptions from Fees, Indemnification Agreement and Insurance" to the Oak Harbor Municipal Code to read as follows:

5.50.060 Exemptions from Fees, Indemnification Agreement and Insurance. No fee, indemnification agreement or insurance requirement shall be imposed when prohibited by the First and Fourteenth Amendments to the United States Constitution. Political or religious activity intended primarily for the communication or expression of ideas shall be presumed to be a constitutionally protected event. Factors that may be considered in evaluating whether or not the fee applies include the nature of the event; the extent of commercial activity, such as the sales of food, goods, and services; product advertising or promotion, or other business participation in the event; the use or application of any funds raised; if part of any annual tradition or series, previous events in the sequence; and the public perception of the event.

Section Eight. There is hereby added a new Section 5.50.070 entitled "Indemnification Agreement" to the Oak Harbor Municipal Code to read as follows:

5.50.070 Indemnification Agreement. Prior to the issuance of a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution, the permit applicant and authorized officer of the sponsoring organization must agree to reimburse the City for any costs incurred by it in repairing damage to City property and indemnify and defend the City, its officers, employees, and agents from all causes of action, claims or liabilities occurring in connection with the permitted event, except those which occur due to the City's sole negligence.

Section Nine. There is hereby added a new Section 5.50.080 entitled "Insurance" to the Oak Harbor Municipal Code to read as follows:

5.50.080 Insurance. The following insurance shall be required in connection with the issuance of a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution.

\$1,000,000 commercial general liability insurance per occurrence combined single limits, \$2,000,000 aggregate unless waived by the City.

The City Administrator is authorized and directed to require written proof of such insurance prior to permit issuance. The insurance policy shall be written on an occurrence basis, shall name the City as an additional insured, shall be written for a period not less than twenty-four (24) hours prior to the event and extending for a period not less than twenty-four (24) hours following the completion of the event, and shall contain a provision prohibiting cancellation of the policy, except upon thirty (30) days written notice to the City.

Section Ten. There is hereby added a new Section 5.50.090 entitled "Fees for City Services" to the Oak Harbor Municipal Code to read as follows:

5.50.090 Fees for City Services.

- (1) Upon approval of an application for a permit for a special event not protected under the First and Fourteenth Amendments of the U.S. Constitution, the City Administrator should provide the applicant with a statement of the estimated cost of providing City personnel and equipment. The applicant/sponsor of the event should be required to prepay these estimated costs for City services and equipment ten (10) days prior to the special event. City services and equipment may include the use of police officers and public employees for traffic and crowd control, pickup and delivery of traffic control devices, picnic tables, extraordinary street sweeping, and any other needed, requested or required City service and the cost of operating the equipment to provide such services.
- (2) If the actual cost for City services and equipment on the date(s) of the event is less than the estimated cost, the applicant/sponsor will be refunded the difference by the City in a timely manner. If the actual cost for City services and equipment on the date(s) of the event is greater than the estimated cost, the applicant/sponsor will be billed for the difference.
- (3) Permit fees and fees for the use of City services and equipment may be waived in part or in full by the City if in review of the application it is found that the event is of sufficient public benefit to warrant the expenditure of City funds without reimbursement by the applicant/sponsor and would not result in the private financial gain of any individual or "for profit" entity.

Section Eleven. There is hereby added a new Section 5.50.100 entitled "Cleanup Deposit" to the Oak Harbor Municipal Code to read as follows:

5.50.100 Cleanup Deposit.

- (1) The applicant/sponsor of an event not protected under the First and Fourteenth Amendments of the U.S. Constitution involving the sale of food or beverages for immediate consumption, erection of structures, horses or other large animals, water aid

stations or any other event likely to create a substantial need for a cleanup, may be required to provide a cleanup deposit prior to the issuance of a special event permit.

- (2) The cleanup deposit may be returned after the event if the area used for the permitted event has been cleaned and restored to the same condition as existed prior to the event.
- (3) If the property used for the event has not been properly cleaned or restored, the applicant/sponsor shall be billed for the actual cost by the City for cleanup and restoration. The cleanup deposit shall be applied toward the payment of the bill.

Section Twelve. There is hereby added a new Section 5.50.110 entitled "Revocation of Permits" to the Oak Harbor Municipal Code to read as follows:

5.50.110 Revocation of Permits. Any permit issued under this ordinance may be summarily revoked by the City at any time when, by reason of disaster, public calamity, riot or other emergency or exigent circumstances, the City determines the safety of the public or property requires such immediate revocation. The City may also summarily revoke any permit issued pursuant to this ordinance if the committee finds that the permit has been issued based upon false information or when the permittee exceeds the scope of the permit or fails to comply with any condition of the permit. Notice of such action revoking a permit shall be delivered in writing to the permittee by personal service or certified mail at the address specified by the permittee in the application.

Section Thirteen. There is hereby added a new Section 5.50.120 entitled "Violation - Penalty" to the Oak Harbor Municipal Code to read as follows:

5.50.120 Violation - Penalty.

- (1) It shall be unlawful for any person to sponsor or conduct a special event requiring a special event permit pursuant to this ordinance unless a valid permit has been issued and remains in effect for the event. It is unlawful for any person to participate in such an event with the knowledge that the sponsor of the event has not been issued a required, valid permit or with knowledge that a once valid permit has expired or been revoked.
- (2) The special event permit authorizes the permittee/sponsor to conduct only such an event as is described in the permit, and in accordance with the terms and conditions of the permit. It is unlawful for the permittee/sponsor to willfully violate the terms and conditions of the permit, or for any event participant with knowledge thereof to willfully violate the terms and conditions of the permit or to continue with the event if the permit is revoked or expired.
- (3) Any person or organization violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a penalty of a fine not more than Five Hundred Dollars (\$500.00) or by imprisonment of not more than ninety (90) days, or both such fine and imprisonment.

Section Fourteen. There is hereby added a new Section 5.50.130 entitled "Savings Clause" to the Oak Harbor Municipal Code to read as follows:

5.50.130 Savings Clause. If any section, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section Fifteen. Section 6.14.100 entitled "Unlawful assemblies or meetings" of the Oak Harbor Municipal Code is hereby amended to read as follows:

6.14.100 Special Events Permit. It is unlawful to hold a meeting of more than thirty (30) people in an Oak Harbor park without obtaining a special events permit from the City.

Section Sixteen. Section 6.14.080 entitled "Soliciting and sound trucks" of the Oak Harbor Municipal Code is hereby amended to read as follows:

6.14.080 Soliciting and sound trucks. It is unlawful to take up collections, or to act as or ply the vocation of solicitor, agent, peddler, faker, mendicant, beggar, strolling musician, organ grinder, exhorter, barker, showman or bootblack, or to operate or use any loudspeaker without written permission of the council; provided sound amplification may be authorized for use subject to conditions of special events permit.

Section Seventeen. Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2007.

THE CITY OF OAK HARBOR

Attest:

Mayor

City Clerk

Approved as to Form:

City Attorney

Published: _____