

Proposed by:	Civic Affairs Committee
Attorney Review:	08/28/2017
First Reading:	09/07/2017
Second Reading:	_____
Vote:	<input type="checkbox"/> Aye <input type="checkbox"/> Nay <input type="checkbox"/> Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 17-13**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 5.20 RESTRICTED BUSINESSES TO ESTABLISH REGULATIONS FOR PANHANDLING.

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. Section 3 of this ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend SMC 5.20 Restricted Businesses to establish regulations for panhandling.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. SMC 5.20 Restricted Businesses is hereby amended as follows:

Chapter 5.20
RESTRICTED BUSINESSES **AND CERTAIN OTHER ACTIVITIES ON MUNICIPAL PROPERTY**

- Sections:
- 5.20.010 Commercial solicitation and off-premise canvassing.
 - 5.20.020 Commercial use of municipal trail prohibited.
 - 5.20.030 Mobile food units and mobile retail units.
 - 5.20.040 Panhandling restricted.**
 - 5.20.050 Busker permits (reserved).**

- 5.20.010 Commercial solicitation and off-premise canvassing.
- A. This Section is based on the following findings and purposes:
1. Because of the proliferation of the off-premises solicitation locations, particularly within the Historic District, 2nd Avenue East of Broadway, Congress Way and Broadway south of 1st Avenue, and the fact that the volume of such activities has resulted in complaints by pedestrians and tourists about the aggressive and persistent actions of such persons attempting to engage them in a conversation in order to consummate a business transaction, it is the intent of this section to preserve and protect the unique charm and small town character of the Historic District, which serves as a major attraction to thousands of tourists each year.
The municipality is committed to maintaining its small town historic character, scenic beauty and natural resources, which are

the foundation of its economic strength and quality of life. These essential components of the municipality's attractiveness to residents and visitors have been severely impaired by the practice of aggressive off-premises canvassing, particularly as practiced in the central tourist destination of Skagway's Historic District, 2nd Avenue East of Broadway, Congress Way and Broadway south of 1st Avenue.

This section is therefore directed solely to the regulation of the time, place, and manner of certain limited forms of commercial speech with the general goal of requiring that person-to-person solicitation activities in the Historic District, 2nd Avenue East of Broadway, Congress Way and Broadway south of 1st Avenue be confined to enclosed structures or on the actual business premises of the soliciting entity. This section is not intended to regulate any form of speech other than speech designed to do no more than propose a commercial transaction.

Given the unique commingling of both public and privately owned sidewalks throughout the Historic District which are equally accessible without restriction by tourists and pedestrians, the purposes of this section can only be made effective if the restrictions contained herein are applied to both public and private sidewalks and open space.

2. Tourism is essential to the municipality's fiscal strength. Skagway's friendly, small-town, historic environment has played a substantial role in making it an attractive tourist destination. In 2002, it is estimated that approximately \$70,000,000 in retail sales was attributable to visitor spending, and taxable visitor retail, lodging, and service industry expenditures were approximately \$87,500,000- representing over 80% of all taxable expenditures in these categories. In fiscal 2001 – 2002, the municipality collected approximately \$141,000 in bed taxes and \$3.5 million in city municipal sales tax. Tourism is also the municipality's leading employer, accounting for 500 jobs. Because the Historic District is a critical component of the municipality's entire sales tax base, this section is further designed to protect the economic viability of this area by ensuring a pleasurable outdoor shopping experience uninhibited by repeated personal sales solicitations for the thousands of tourists who visit the area each year.
3. This section is further designed to:
 - a. Protect local residents and visitors against unreasonable interference or disturbance of their peace or obstruction of their free travel on municipal streets and sidewalks within the Historic District, 2nd Avenue East of Broadway, Congress Way and Broadway south of 1st Avenue from the conduct of off-premises canvassing solicitors.
 - b. Insure that persons engaging in off-premises canvassing do not misrepresent the nature of the products that they are promoting or the identity of the business that is promoting the products and to

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 17-13

Page 3 of 7

provide a means for regulating such activities and enforcing the provisions of this section.

B. Definitions.

1. "Business" shall mean any commercial activity in which any goods, services, tours, or edibles are sold or offered for sale or for rent within the corporate limits of the municipality.
2. "Enclosed structure" shall mean a structure having a roof and supported by column or walls. Enclosed structure does not include any sidewalks under a roofed area.
3. "Goods" shall mean any tangible item, including edibles.
4. "Off Premises Canvassing" or "OPC" shall mean person-to-person efforts solely intended to interest pedestrians in or solicit the participation of pedestrians in commercial transactions for private profit with a business, except when done entirely within an enclosed structure.
5. "OPC employer" shall mean any business or other person who directly hires or otherwise contracts with an OPC solicitor to conduct OPC activities on its behalf.
6. "OPC solicitor" shall mean any person engaged in off-premises canvassing.
7. "Product" shall mean the products, tours, goods, edibles or services sold or offered for sale or rent.
8. "Historic District" shall mean that area designated on the "Municipality of Skagway Official Zoning Map," generally described as that area along Broadway between 1st Avenue and 7th Avenue including all or portions of Blocks 1, 2, 3, 4, 22, 23, 24, 25, 26, 27, 35, 36, 37 and portions of the Mill Lot, Pullen Tract and the Courthouse Reserve.
9. "Sidewalk" shall mean any outside walkway, public or private, used by pedestrians.
10. "Street" shall mean all that area dedicated to public use for public street purposes and is within the jurisdiction and control of the Municipality of Skagway and shall include, but not be limited to, public roadways and alleys.

C. Limitations on Off-Premises Canvassing Activity.

1. No person shall engage in off-premises canvassing within the Historic District, 2nd Avenue East of Broadway, Congress Way or Broadway south of 1st Avenue except within a building constructed or maintained within the purposes of the Skagway Municipal Code or in an area approved in writing by the borough manager in accordance with the standard set forth in section ~~(C)-(3)~~ below, for the purpose of selling or offering for sale any goods or services of any kind for private profit.
2. When the mayor declares a designated fair or festival to occur on specified dates, he may select specified segments of designated streets to be closed to other than pedestrian traffic during the festival or fair and may authorize permits allowing booths, carts, stands, or other temporary shelters from which artisans, vendors, and others may show and offer for sale items appropriate to the theme of the festival or fair. Such permits shall be valid

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 17-13

Page 4 of 7

only for the duration of the festival or fair, and shall be effective only within the segment of street specified in the permit and for the type of use stated on the face of the permit.

3. The manager shall issue authorization upon proof by the applicant in writing that the area proposed for vending is at least 200 square feet in size and not so situated as to cause sidewalk obstructions, impede traffic, or interfere with traffic lines of sight. Applicant shall retain a copy of this letter at all times while vending.

D. Specific Prohibitions and Appropriate Conduct.

1. In addition to the provisions of any other applicable term of this article, it shall be considered unlawful and a violation of this article for an OPC solicitor to:

- a. Throw, place or deposit solid waste, litter, paper, documents or handbills on any street or sidewalk.
- b. Intentionally inflict emotional distress by verbal or physical harassment or coercion on any person.
- c. Misrepresent in any way the price, quality or nature of the product being promoted.
- d. Misrepresent the source or sponsor of any information offered or provided.
- e. OPC solicitors shall conduct themselves in accordance with the following standards:
 - i. No OPC solicitor shall touch a person without consent during a solicitation.
 - ii. No OPC solicitor shall solicit using any offensively loud sound, vociferous speech, boisterous conduct or profane or vulgar language.
 - iii. No OPC solicitor shall solicit an occupant of a vehicle in a public street whether the vehicle is moving, stopped, or parked.

2. It shall be considered unlawful and a violation of this article for an OPC solicitor, or anyone engaging in or attempting to engage in a commercial transaction for private profit that is related solely and exclusively to the seller's economic interest, to interfere with or obstruct the free travel or passage of any pedestrian on any street or sidewalk or obstruct any person's free movement or access to or from any public street or sidewalk for the primary purpose of selling or offering for sale any goods or services of any kind for private profit.

E. Violations and Penalties.

1. Any responsible OPC employer and each responsible OPC solicitor shall be jointly and severally liable for any violations of this article.
2. For violations of this chapter refer to Chapter 1.20, General Penalty. Violations of this chapter are subject to civil fines established by resolution.

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 17-13

Page 5 of 7

5.20.020 Commercial use of municipal trail prohibited.

It is the intent of this code to protect the public use and enjoyment of the municipal trail system from the incursion of commercial activity. This trail system is in itself a unique and pristine environment, the enjoyment of which will be diminished by commercial activity.

- A. No person, agency or business shall conduct commercial tours on any trail maintained by the Municipality of Skagway, nor sell, or offer for sale anything upon this trail system.

For purposes of this section, commercial tours shall be defined as any group larger than one that is being guided on any Municipality of Skagway Trail, for any form of compensation. Tours offered by any employee of any commercial venture, including, but not limited to cruise line employees, and included in the price of that venture shall be considered commercial tours.

- B. For purposes of this section, trails maintained by the Municipality of Skagway include the Dewey Lakes Trail System, Yakutania Point Trail System, AB Mountain Skyline Trail, the Lost Lake Trail and the West Creek Trail from the slide to the back valley.
- C. Exemptions. —Interpretive programs offered by local, state or federal land management agencies, non-profit youth organizations, training sponsored by or subscribed to by local emergency response agencies, or recreational events with a permit shall be exempted from this section.

5.20.030 Mobile food units and mobile retail units.

- A. Pushcart Food Service Units and Pushcart Retail Service Units Prohibited. Pushcart food service units and pushcart retail service units are prohibited within the borough, except when authorized under Section 5.20.010(C)(2).
- B. Mobile Units Prohibited Within Off-Premises Canvassing Areas. Mobile food units and mobile retail units are prohibited within the areas described in Section 5.20.010(C)(1), except when authorized under Section 5.20.010(C)(2).
- C. Mobile Food Units and Mobile Retail Units Prohibited on Municipal Property. Mobile food units and mobile retail units are prohibited on municipally owned property, except when authorized under Section 5.20.010(C)(2). Where a vendor is located on private property, the mobile food unit or mobile retail unit shall be set back from any public sidewalk so as not to interfere with pedestrian traffic.
- D. Adjacent Structures. Structures shall not be attached or affixed to a mobile food unit or mobile retail unit. Mobile food units and mobile retail units shall be set back by five (5) feet from any adjacent buildings and any adjacent mobile food unit or mobile retail unit.
- E. Utilities/Services. Garbage service is required. The site that the unit is operating upon must be maintained in accordance with Title 8 (Health and Safety), Title 9 (Public Peace, Safety and Welfare), and Title 13 (Public Utilities).
- F. Restrooms Required. Whenever seating is provided, the number and location of restrooms required for a mobile food unit or mobile retail unit shall match the requirements for restaurant- or mercantile-type occupancies in accordance with the adopted building codes (see Chapter 15.02 for adopted building codes).

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 17-13

Page 6 of 7

- G. Licenses and Permits Required. Any and all licenses and permits required by federal, state and local laws must be obtained and displayed prior to and during operation. This includes a municipality of Skagway business license and all permits required by the state of Alaska's Department of Environmental Conservation Division of Environmental Health for food safety and sanitation.
- H. Qualification. A mobile food unit or mobile retail unit shall be considered as such only if the unit is capable of moving easily on a daily basis and is mounted on a chassis and wheels and is registered with the state of Alaska's Division of Motor Vehicles. Structures placed on a foundation, temporary or permanent, are required to apply for a development permit and comply with the applicable building codes per Chapter 15.02 as well as all applicable federal and state permits. All permits that are required to be posted on the premises and visible to the public shall be posted on the unit, adjacent to the sales counter and/or cash register.
- I. Appearance. It is unlawful and a public nuisance to park, store, or leave standing in public view, upon any public or private property, any mobile food unit or mobile retail unit that is wrecked, dismantled, unregistered, inoperative or otherwise unsightly. Any mobile food unit or mobile retail unit shall be deemed unsightly when body parts rust or become corroded, paint becomes faded, chipped, or peeled, or the unit exterior becomes otherwise dilapidated.
- J. Penalty. For violations of this section, refer to Chapter 1.20, General Penalty. Violations of this section are subject to civil fines established by resolution.

5.20.040 Panhandling restricted.

- A. As used in this section, "panhandling" means any solicitation made in person upon any street, sidewalk, public place, or park within the borough, in which a person requests an immediate donation of money or other gratuity from another person, and includes but is not limited to seeking donations:**
 - 1. Where the person being solicited receives an item of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation.**
- B. It shall be unlawful to engage in an act of panhandling on any day after sunset, or before sunrise.**
- C. It shall be unlawful to engage in an act of panhandling when either the panhandler or the person being solicited is located at any of the following locations:**
 - 1. The Historic District: that area designated on the "Municipality of Skagway Official Zoning Map", generally described as that area along Broadway between 1st Avenue and 7th Avenue including all or portions of Blocks 1, 2, 3, 4, 22, 23, 24, 25, 26, 27, 35, 36, 37 and portions of the Mill Lot, Pullen Tract and the Courthouse Reserve.**
 - 2. In any public transportation vehicle or public transportation facility;**
 - 3. In a vehicle which is parked or stopped on a public street or alley;**

4. Within 20 feet in any direction from an automatic teller machine or entrance to a bank; or
 5. Within ten feet of any entrance to a building or crosswalk.
- D. It shall be unlawful to engage in an act of panhandling in an aggressive manner, including any of the following actions:**
1. Touching the solicited person without the solicited person's consent;
 2. Blocking the path of a person being solicited, or the entrance to any building or vehicle;
 3. Following behind, ahead, or alongside a person who walks away from the panhandler after being solicited;
 4. Using profane or abusive language, either during the solicitation or following a refusal to make a donation, or making any statement, gesture, or other communication which would cause a reasonable person to be fearful or feel compelled; or
 5. Panhandle in a manner that obstructs pedestrian or vehicular traffic. As used in this section, "obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a municipal permit, shall not constitute obstruction of pedestrian or vehicular traffic.
- E. Penalty. For violations of this section, refer to Chapter 1.20, General Penalty. Violations of this section are subject to civil fines established by resolution.**

5.20.050 Busker permits (reserved).

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this ___ day of _____, 2017.

Mark Schaefer, Mayor

ATTEST:

Emily A. Deach, Borough Clerk (SEAL)