

DRAFT

Proposed by:	_____
Attorney Review:	_____
First Reading:	_____
Second Reading:	_____
Vote: <input type="checkbox"/> Aye	<input type="checkbox"/> Nay <input type="checkbox"/> Absent

MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 23-XX

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 5.20 TO ALLOW MOBILE FOOD/RETAIL TRUCKS AT SEVEN PASTURES DURING FESTIVALS DECLARED BY THE MAYOR.

WHEREAS, commercial activities and mobile food/retail trucks are currently restricted at Seven Pastures per SMC 5.20.030(B)-(C) and SMC 19.06.070; and

WHEREAS, there has been discussion and desire expressed by the community to allow for expanded food service at Seven Pastures, particularly food/retail trucks; and

WHEREAS, currently, an exemption is allowed for mobile food units on municipal property under SMC 5.20.010(C)(2), the section that allows the Mayor to declare a festival and permit mobile food units on municipal property in the Historic District; and

WHEREAS, expanding the area for which the Mayor can declare a festival could allow mobile food units at Seven Pastures;

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 and Certain Other Activities on Municipal Property to allow mobile food/retail trucks at Seven Pastures during festivals declared by the Mayor.

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 and Certain Other Activities on Municipal Property is hereby amended as follows:

5.20.010 Commercial solicitation and off-premises 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 seventy million dollars (\$70,000,000) in retail sales was attributable to visitor spending, and taxable visitor retail, lodging, and service industry expenditures were approximately eighty-seven million five hundred thousand dollars (\$87,500,000) representing over eighty percent (80%) of all taxable expenditures in these categories. In fiscal 2001--2002, the municipality collected approximately one hundred forty-one thousand dollars (\$141,000) in bed taxes and three million five hundred thousand dollars (\$3,500,000) in city municipal sales tax. Tourism is also the municipality's leading employer, accounting for five hundred (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. Ensure 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 provide a means for regulating such activities and enforcing the provisions of this section.
 - c. Provide for limited and managed commercial use of municipal property during Mayor-declared community events, festivals, and fairs.**

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. "Seven Pastures Recreation Area" shall mean the municipally owned land encompassed within USS 994 Lot 1, including Dedman Stage, the ballfields, the community garden, and all access roads and parking areas.**
- ~~9~~10. "Sidewalk" shall mean any outside walkway, public or private, used by pedestrians.
- ~~10~~11. "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 subsection (C)(~~3~~2) of this section, for the purpose of selling or offering for sale any goods or services of any kind for private profit.
2. The manager shall issue authorization upon proof by the applicant in writing that the area in the historic district proposed for vending under subsection (C)(1) is at least two hundred (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.
- ~~23.~~ When the mayor declares by proclamation a designated community event, fair, or festival to occur in the historic district or at Seven Pastures Recreation Area on specified dates, ~~he~~ they may select specified segments of designated streets to be closed to other than pedestrian traffic during the community event, festival, or fair and may authorize permits through the Skagway Visitor Department allowing mobile retail or food units per SMC 5.20.030(B) and (C), 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 community event, festival, or fair. Such permits shall be valid only for the duration of the community event, festival, or fair, and shall be effective only within the ~~segment of street area~~ 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 two hundred (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 chapter, 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 public 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 public 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 chapter.
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.

SMC 5.20.030 Mobile food units and mobile retail units.

- 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)(~~23~~).
- 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)(~~23~~). 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.

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 _____, 2023.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)