**TOWN OF SLAUGHTER BEACH, DELAWARE**

**ORDINANCE #21-01**

**AN ORDINANCE ESTABLISHING SPECIAL EVENT REGULATIONS FOR THE TOWN OF SLAUGHTER BEACH**

 WHEREAS, pursuant to Section 6.2.34 of the Charter of the Town of Slaughter Beach, the Town Council is authorized to “make, adopt, and establish, alter and amend all such Ordinances, Regulations, Rules, and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the order, protection and good government of the Town, the protection and preservation of persons and property, and the public health and welfare of the Town and its inhabitants;”

 WHEREAS, public spaces and the corresponding parking areas in Slaughter Beach are limited and need to be regulated and used in an orderly manner in order to promote the general health, safety and welfare of the community;

 WHEREAS, it is necessary to establish guidelines that do not exclude communication of a particular content but allow for special events to use the limited available public space;

 WHEREAS, the Town Council seeks to promote the economic well-being of the community through the orderly attraction of people to special events while at the same time establishing financial accountability for damage to public property caused by a special event by ensuring that any incremental or extraordinary costs to the Town are borne by the promoter or organizer of the special event;

 WHEREAS, it is necessary to have a permitting process in place in order for the Town to have ample time to prepare for a special event and ensure that Town resources are adequate to provide for proper services for a special event;

 WHEREAS, in accordance with Section 4.5.3 of the Town Charter, 15 days’ notice of these changes were given by posting notice at the town bulletin board and on the Town website, and in the opinion of the Town Council of the Town of Slaughter Beach, it is in the best interest of the public health, safety, and welfare to adopt regulations governing special events and incorporate those regulations into the Town Code of the Town of Slaughter Beach.

 NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Slaughter Beach, a majority thereof concurring in Council duly met, as follows:

**Section 1.** The following is hereby adopted as subsection II.10 (Special Events) of Chapter 1 (Peace and Good Order) of Title II of the Town Code:

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### **II.10 Special Events**

#### **II.10.1 Purpose and Intent.**

The purpose and intent of this section is to:

1. Promote and support the public’s right of assembly and free speech.
2. Promote the general health, safety and welfare of the community.
3. Establish guidelines that do not exclude communication of a particular content but allow for special events to use the limited public space available.
4. Promote the economic well-being of the community through the orderly attraction of people to special events and encouraging local residents to hold special events in Slaughter Beach.
5. Ensure that Town resources are adequate to provide proper services for a special event by having ample time to prepare.
6. Establish financial accountability for damage to public property caused by a special event by ensuring that any incremental or extraordinary costs to the Town are borne by the promoter or organizer of the special event.

#### **II.10.2 Definitions.**

As used in this article, the following terms shall have the meanings indicated:

APPLICANT — The person or persons, organization, partnership or corporation required to apply for a permit under this section.

SPECIAL EVENT - Any assembly, meeting, demonstration, picket line, parade, rally or gathering of more than fifty (50) persons for a common purpose as a result of prior planning that affects or may reasonably be expected to affect the normal flow or regulation of vehicular or pedestrian traffic upon the sidewalks, boardwalks, plazas, parks, nature trails, public open spaces, playgrounds, recreational areas, and/or beaches; or that occupies any public facility or public area open to the general public in such a manner as having a tendency to interfere with the normal use of that public facility or public area.

#### **II.10.3 Prior Notice and Permit Required; Application Requirements.**

1. All special events are prohibited without a permit issued by the Town. At least twenty-one (21) days, but no more than twelve (12) months, before the date of the special event, an application containing the following shall be submitted to the Town Clerk:

(1) The character, time, duration and place of the special event. If the special event is to be a parade, procession or similar moving assembly, the proposed route thereof.

(2) The name, mailing address, email address, and phone number for the applicant and all persons responsible for the special event, including any organization hosting the event.

(3) A brief description of the event and all associated activities, including the estimated number of persons and vehicles expected to participate.

(4) The names of the participating organization.

(5) A nonrefundable special event permit application fee of $50.00 for residents and $100.00 for non-residents, which application fee shall be waived by the Town Clerk for any documented 501(c)(3) not-for-profit corporations.

1. The Town Clerk shall, within five working days of the application’s submission:
2. Approve the application and issue a permit upon receipt of the security deposit, signed indemnification agreement, and insurance certificate.
3. Deny the application based on one of the reasons set forth in Section II.10.4.
4. Approve the application and, upon receipt of the security deposit, signed indemnification agreement, and insurance certificate, issue a permit with specified limitations with respect to day, time, duration, location or other reasonable limitations, including payment for the Town’s incremental costs necessary to provide those public services necessitated by the special event; provided that such incremental costs shall not include the cost of providing police protection to participants or the public necessitated by the potential for hostile response to the special event.
5. Each special event permit shall include the following:
6. The starting and ending times for the event, including time allowed to assemble or disperse the participants and clean up after the event, which time shall be stated separately;
7. The portions of the streets, sidewalks, or public places that may be occupied by the parade or public assembly;
8. If a parade, the minimum and maximum speed of the parade vehicles or participants, the maximum interval of space to be maintained between parade units, and the maximum length of the parade.

1. An applicant shall not be granted more than one special event permit in a 12-month period.
2. Upon request of the applicant, the Town Clerk may agree to waive the permit application deadline to review an application which was filed less than twenty-one (21) days before the date of the proposed special event where the applicant demonstrates that failure to waive the permit application deadline would substantially burden protected rights, including speech and assembly, as to matters of public concern, and that an expedited review process would allow reasonable review to address substantial matters of public safety and welfare.
3. The Town Clerk shall uniformly consider each application upon its merits and shall not discriminate in granting or denying special event permits based on political, religious, ethnic, race, disability, sexual orientation or gender-related grounds or other criteria that would constitute a violation of state or federal law.
4. The Town seeks to impose reasonable time, place, and manner controls in an appropriate and limited manner upon events for which permits are required. This Section II.10 shall be construed and administered in a manner that seeks to allow for expression, assembly, and the exercise of religious rights in accordance with applicable constitutional and statutory limits and controls.
5. Any special event permit issued involving use of the municipal pavilion shall be governed by the terms of this Section II.10 and shall not be subject to the same limitations set forth in Section II.6.1 of the Town Code, provided that no special event permit involving use of the municipal pavilion shall be issued for the same date and time that the pavilion was previously reserved under Section II.6.1.
6. A special events permit does not grant the applicant exclusive use of public restrooms, the public beach, or public parking lot.
7. The Town Clerk may require as part of a special event permit that the applicant, at the applicant’s expense, arrange for portable restroom facilities to be provided at a special event when the Town Clerk determines that the public restrooms will be insufficient for the anticipated demand based on the time of day and length of the special event, the day of the week and the time of year of the special event, the number of anticipated special event participants, and the typical public usage of the public beach in the vicinity of the public restrooms for the day of the week and month proposed.
8. Any special event reasonably anticipated to consist of more than 175 participants is prohibited.

#### **II.10.4 Denial or modification of permit application.**

The Town Clerk may deny or modify a special event permit for any of the following reasons:

1. The permit application was not fully completed and executed, or the applicant did not tender the application fee.
2. The permit application is found to contain material falsehoods or misrepresentations.
3. The applicant or the person on whose behalf the permit application was submitted has on prior occasions damaged Town property and not paid in full for such damage.
4. A fully executed special event permit application for the same time and place has been previously received by the Town, and a permit has been or will be granted to the prior applicant authorizing uses or activities which do not reasonably permit multiple special events at the area in question.
5. The special event would conflict with a previously planned program organized and conducted by the Town and previously scheduled for the same time and place.
6. The special event would present an unreasonable danger to the health or safety of the applicant, other users of the public property, or of the public.
7. The applicant has already been granted one special event permit within the past 12 months.
8. The special event as proposed will violate one or more of the terms of the Town Code.

#### **II.10.5 Appeals; hearing.**

1. Any person aggrieved by the action of the Town Clerk in denying, modifying, suspending, or revoking a permit or otherwise enforcing the terms of this Section II.10 may appeal to the Town Council by promptly filing with the Town Council a written statement setting forth fully the grounds for such appeal. Upon receipt of the written appeal, the Town Council shall set a time and place for hearing such appeal and shall immediately notify the applicant of such hearing by telephone, email, and United States mail, postage prepaid, at the applicant’s phone number, email address and mailing address listed on the application.
2. At such hearing, which shall be held within 5 business days of receiving the written appeal, the applicant and the Town Clerk shall be entitled to present such evidence and arguments as they deem appropriate in support of their respective positions; to cross-examine witnesses; to be represented by legal counsel; and to request that witnesses be sworn. The hearing shall be recorded, and the Town Council shall articulate the reasons for its decision in a written decision to be issued as soon as practical thereafter. Strict rules of evidence shall not apply to the conduct of such hearing, but the Town Council may hear and consider any evidence deemed by the Town Council to be relevant to the appeal.
3. Any person aggrieved by a decision of the Town Council may seek review of that decision by a court of competent jurisdiction in accordance with applicable statutes or court rules; provided that any person granted standing to file an appeal shall first exhaust such administrative remedies prior to seeking judicial relief.

#### **II.10.6 Indemnification and Insurance requirement.**

1. Insurance. Whenever the number of participants is reasonably anticipated to exceed 100 persons, the Town Clerk shall not issue a special event permit until the applicant shall have provided to the Town proof of liability and property damage insurance (commonly known as “public gathering insurance”) in the minimum amount of $300,000 for standard special events or $1,000,000 for special events that will include inflatable games or the commercial preparation and/or distribution of food, which policies shall list the Town of Slaughter Beach and its officers, agents, and employees as additional insureds, and which shall require 30 days’ written notice to the Town of Slaughter Beach prior to cancellation.
2. Indemnification. No special events permit shall be issued until the applicant has executed and delivered to the Town the Town’s special events indemnification agreement (to be supplied by the Town) to indemnify and hold harmless the Town, its elected and appointed officials, employees, and agents, from and against any and all claims for monetary damages and costs of defense (including reasonable attorneys’ fees), for damage to property or personal injury (including wrongful death) proximately caused by the applicant, its members, agents, and/or other persons participating in the event with the consent of the applicant under the authority of the permit issued to the applicant pursuant to this Section II.10; provided, however, that nothing herein shall be construed to require the applicant to provide such indemnification as to any claims arising out of or connected with the conduct or actions of other persons not acting in concert with the applicant, including spectators, protestors, or counter-demonstrators.

#### **II.10.7 Cleanup; permit expiration; deposit to ensure cleanup.**

1. Cleanup. The applicant shall be responsible for the removal of all debris, litter and equipment generated or caused by the special event participants within 24 hours of the event's conclusion. If said debris, litter and equipment are not removed, as required herein, the Town shall have the authority to remove it at the expense of the applicant.
2. Permit expiration. The permit shall set forth the time period for which the permit is issued, which shall include a reasonable period of time to allow the applicant to clean up from the special event. The permit shall expire at the end of the time period specified in the permit.
3. Deposit. In addition to the permit fee, a refundable deposit of $500.00 in the form of cash, money order, or certified check made payable to the Town of Slaughter Beach shall be required prior to the issuance of a permit. Such deposit shall be returned to the applicant without interest no later than five working days after the conclusion of the special event, provided that the applicant has satisfied its cleanup obligations under subsection (a) and (b) above and the special event participants have not caused any damage to the Town pavilion or other Town facilities or infrastructure. In the event that the applicant fails to satisfy such cleanup obligations or the Town has experienced damage as outlined herein, the Town may use all (or as much as is reasonably necessary) of the deposit to effect satisfactory cleanup and/or repairs. Any expenses incurred by the Town in excess of the deposit shall be the Applicant’s responsibility to pay and a debt to the Town, and the Town may proceed to collect the same in any lawful manner. Payment shall be due within 15 days of the date of the Town’s invoice to the applicant, and the applicant may appeal such charge pursuant to Section II.10.5.

#### **II.10.8 Police Services.**

1. When reviewing an application, the Town Clerk, in consultation with the Delaware State Police, shall determine whether and to what extent police services are reasonably necessary for the event for traffic control (vehicular and pedestrian) and for public safety and welfare, including public convenience. The Town Clerk shall base this decision on relevant criteria including, but not limited to, the size, location, duration, time and date of the event; the anticipated number of participants and corresponding vehicles; the number of streets and intersections to be blocked; and the need to detour or preempt public travel and use of streets and sidewalks.
2. The communicative or associative content of the event shall not be a factor in determining the amount of police services necessary, unless the applicant’s speech is determined to not constitute any form of expression that is protected under the laws or constitution of the State of Delaware or the United States, and has reasonable potential to cause, or will have the result of causing, public alarm, disruption, or violence.
3. If police services for the event are deemed necessary based upon the standards set forth herein, the Town Clerk shall inform the applicant, and the applicant shall bear financial responsibility for the cost of securing the police services. The Town Clerk may, but is not required to, approve use of private security details in lieu of any or all police services that might otherwise be required under this section. Anything herein to the contrary notwithstanding, no costs shall be attributed to the applicant that were beyond the control or responsibility of the applicant (including costs attributable to the conduct of spectators, protestors, or counter-demonstrators).

#### **II.10.9 Prohibitions on commercial activities; exception.**

No permit shall be issued authorizing any special event where a significant or substantial purpose of the event is the sale or advertising of any product, goods, wares, real estate or merchandise for private gain or profit.

#### **II.10.10 Interference.**

No person(s) shall knowingly disrupt or interfere with any duly permitted special event.

**II.10.11 Exceptions and Waivers**

1. Indigency Exemption. Where the special event for which a permit is sought is to be conducted for the sole purpose of public issue speech protected under the First Amendment or the constitution of the State of Delaware, and the applicant provides reasonable proof that the applicant is indigent and unable to pay any portion of the permit fee, security deposit, or police coverage expenses, or is unable to indemnify the Town or provide proof of insurance, the Town Clerk shall waive payment or provision of all or such portion thereof as the applicant cannot pay or provide. In considering the applicant’s indigency claim, factors to be considered by the Town Clerk may include: the total amount required from the applicant; an affidavit from the applicant as to the applicant’s lack of financial resources (i.e. no source of income including dues, membership fees, grants or contributions, no bank account or cash on hand, no property ownership), the size of the organization or group represented by the applicant, whether such organization or group is a sub-chapter, member, or affiliate of any state-wide or national organization or group which could provide financial assistance, and the number of persons anticipated to participate in the event.
2. Government Speech and Government-favored Speech Exemption. Where the speech or message to be conveyed by the event is speech which is controlled or endorsed by the Town as its own message, or where the Town elects to subsidize speech it favors as benefiting the nature of the community, the Town Clerk may waive the application fee and security deposit and up to $2,000 in other costs; provided, however, that in doing so, the Town shall not engage in content-based or viewpoint-based discrimination.
3. Town-Sponsored Events. The terms of this Section II.10 (Special Events) shall not apply to special events or other activities sponsored in whole or in part by the Town of Slaughter Beach.

#### **II.10.12 Suspension or revocation of permit.**

A permit issued hereunder may be revoked or suspended by the Town Clerk, without prior notice, for any of the following causes:

* 1. Fraud, misrepresentation or a material and significant incorrect statement contained in the application for the permit or made in the course of promoting the special event.
	2. Failure to comply with any provision of this Section II.10.
	3. Conducting the special event in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

#### **II.10.13 Violations and Penalties**

Any person or applicant violating any provision of this Section II.10 shall, in addition to other enforcement remedies and/or sanctions available to the Town, pay, upon conviction, a fine of not less than $100 nor more than $500. Provided, however, that with the consent, in writing, of the person charged with violating this Section II.10, the Town is authorized to accept and receive, without a hearing, $75 if such violation is paid within thirty days from the date of the violation or $100 as a penalty for such violation if such violation is paid more than 30 days of the violation. Each day a violation of this Section II.10 exists shall constitute a new and separate offense.

**Section 2.** The foregoing regulations shall be incorporated into and hereafter become a part of the Slaughter Beach Town Code.

**Section 3.** **Severability**. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that the Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the Town Council’s intent.

**Section 4. Effective Date**. This Ordinance shall become effective immediately upon its adoption by the Town Council.

**SYNOPSIS**

 This ordinance establishes a permitting process for special events being held on public property involving more than 50 persons. Applications must be submitted at least 21 days prior to the date of the special event, but no more than 12 months prior to the event. The ordinance specifies what information is required to be included in an application, which must be accompanied by a $50.00 application fee for residents and a $100.00 fee for non-residents. The application fee may be waived for non-profit organizations. The ordinance outlines the review procedures for special event permit applications and the grounds for denying a special event permit application. Pursuant to criteria established in the ordinance, applicants may be required to pay to bring in portable restrooms and for police services. Applicants are responsible for cleaning up any trash left by special event participants, and a security deposit of $500.00 is required that can be used to offset cleaning costs experienced by the Town. Insurance and indemnification requirements are set forth in the ordinance. Grounds for suspending a special event permit are included in the ordinance, along with penalties for violating the ordinance. This ordinance prohibits special events that will have more than 175 participants and exceptions are included for government speech, indigent groups, and town-sponsored events.

 This will certify that this is a true copy of the Ordinance duly adopted by the Town Council of the Town of Slaughter Beach at a meeting at which a quorum was present on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021.

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Secretary Mayor