

ORDINANCE NO. _____

**AN ORDINANCE TO REPEAL EXISTING CHAPTER 77 AND TO ESTABLISH
GUIDELINES AND PERMITTING PROCESS FOR COMMUNITY
DEMONSTRATIONS IN TOWN PARKS AND ON TOWN-OWNED PROPERTY
BY ADOPTING A NEW CHAPTER 77, TITLED COMMUNITY
DEMONSTRATIONS**

WHEREAS, the Council of the Town of Ocean View (“Town Council”) possesses the authority to adopt, amend, modify, or repeal the Town of Ocean View Code (“Code”); and

WHEREAS, the Town of Ocean View recognizes and respects the rights of individuals to engage in peaceful activities, including assemblies, protests, and demonstrations; and

WHEREAS, the Town seeks to ensure that such activities are conducted in a manner that protects public safety, minimizes disruptions to the community, and preserves the rights and freedoms of all citizens; and

WHEREAS, the Town has a compelling interest in regulating the time, place, and manner of Community Demonstrations to ensure public safety, protect public and private property, and maintain public order; and

WHEREAS, to effectuate these goals, the Town Council desires to repeal Chapter 77 of the Town Code and add a new Chapter

NOW, THEREFORE, be it ordained and enacted by the Town Council of the Town of Ocean View:

Section 1. The Town hereby repeals existing Chapter 77 and adopts a new Chapter 77 to the Town Code to read as follows:

Chapter 77. Community Demonstrations.

§77-1 Purpose.

The purpose of this chapter is to:

- A. Protect the First Amendment rights of the citizens of the Town of Ocean View.
- B. Promote the general health, safety and welfare of the community.
- C. Ensure there are adequate numbers of Town personnel to maintain public order and traffic control.

- D. Establish guidelines under which Community Demonstrations may be held and regulations for competing uses of Town owned property.

§77-2 Definitions.

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

Community Demonstrations

An expressive activity consisting of a procession, march or assembly consisting of persons, animals, vehicles, or any other combination thereof, which is to assemble or travel in unison on any Town-owned street, highway, alley, sidewalk or other Town-designated public way which does not comply with normal or usual traffic regulations or controls or one such activity occurring in a Town park or on Town-owned property.

Spontaneous Demonstrations

A Community Demonstration in reaction to current news or affairs coming into public knowledge less than forty-eight (48) hours prior to such Community Demonstration.

Permit

A written authorization issued by the Town Manager and Chief of Police permitting the holder to conduct a Community Demonstration.

Applicant

The person or persons, organization, partnership, corporation or other entity wishing to conduct a Community Demonstration expected to involve more than fifty (50) participants.

§77-3 Permit Required.

- A. All Community Demonstrations involving more than fifty (50) participants shall require a permit from the Town. An Applicant shall file an application with the Town Manager at least forty-eight (48) business hours prior to the Applicant's proposed date and time for the Community Demonstration. The application shall include the following information:
- 1) Name, address, and contact information of the organizer(s).
 - 2) Date, time, and duration of the demonstration.
 - 3) Expected number of participants.
 - 4) Detailed description of the demonstration.
 - 5) Proposed location(s) within the Town where the demonstration is to be held.
 - 6) Organizer's list of proposed vendor(s) in charge of security, sanitation and cleanup of the demonstration.

- 7) Any reasonable additional information requested by the Town Manager or the Chief of Police.

The Town Manager may establish a form of application for the Community Demonstration at his or her election and all Applicants shall be required to use the established form.

- B. Spontaneous Demonstrations prompted by news or affairs coming into public knowledge less than forty-eight (48) hours prior to such demonstration may be conducted in front of and on the sidewalk of the Ocean View Community Center located at 32 West Avenue Ocean View, DE 19970 without the organizers first having to obtain a Community Demonstration permit. Organizers are encouraged to notify the Town as soon as possible to ensure the Town may cover any public safety needs. Nothing herein shall prevent a Spontaneous Demonstration along Route 26 or other state-owned roads.
- C. The Town Manager and Chief of Police, or their designee, shall, within twenty-four (24) hours of receipt of an application for a permit, review it and issue one of the following determinations:
 - 1) Approved without conditions;
 - 2) Approved with conditions as set out in §77-4 below; or
 - 3) Denied with written notice to the Applicant stating the reason for denial pursuant to §77-5 below.
- D. An applicant seeking a permit for a recurring Community Demonstration must only submit one application and fee. A permit for a recurring Community Demonstration is good for four months from the date of approval.

§77-4 Conditions.

After conferring with one another, the Town Manager and Chief of Police, or their designee, may jointly impose reasonable content-neutral conditions in conjunction with issuance of the permit in order to prevent public endangerment, significant traffic congestion, and the deprivation of critical municipal services. Those conditions may include the following:

- 1) Designation of specific areas for the demonstration if a permit has already been issued for the proposed area listed in the application.

- 2) Restrictions on the time of day of the demonstration if the time proposed is outside of the allowed 8:00AM to 8:00PM time frame and safety cannot be reasonably accommodated for.
- 3) Requirements for security and traffic control if the anticipated attendance raises concern for traffic control or public safety.
- 4) Requirements for sanitation and cleanup.

§77-5 Denial.

The Town Manager and Chief of Police, or their designee, may jointly deny any application for a permit to hold a Community Demonstration for the following reasons:

- 1) Incomplete application or an application containing material falsehood or misrepresentation.
- 2) A Permit has been granted to an earlier Applicant for the same time and place.
- 3) The intended use of a Town Park or Town-owned property would present unreasonable danger to health and safety of users of the Town's public spaces or Town employees and personnel.
- 4) The Applicant has damaged Town property before and has not paid to fix or replace the damaged property.
- 5) The Applicant has violated the terms of a prior Permit.

§77-6 Appeals.

Any person aggrieved by the decision of the Town Manager and Chief of Police, or their designee, may, within five (5) days, take an appeal to the Town Council by giving written notice of his or her election to do so to the office of the Town Manager. The Town Manager shall notify the Mayor, who shall call a meeting of the Town Council to hear the appeal within seventy-two (72) hours after giving notice of the hearing in accordance with the special meeting provisions of the Delaware Freedom of Information Act. The Applicant shall bear cost of published notice of the meeting. Within ten (10) days following the date of the hearing, the Town Council shall render a decision of the appeal.

§77-7 Fees.

- A. The Town Manager and Chief of Police, or their designee, shall not issue a permit for a Community Demonstration unless and until the requisite permit fees have been paid. An administrative fee of \$25 shall apply to all permit applications.
- B. If the Town Manager and Chief of Police, or their designee, issue a permit with security, traffic control, sanitation, and/or cleanup conditions, additional fees may be imposed. The additional fees shall be based directly on the amount of municipal

services required. The Town will not impose retroactive fees or require reimbursement of Town costs.

- C. Fee waivers are available for indigent applicants and nonprofit organizations. Proof that an Applicant is indigent or payment of the fee would otherwise create a hardship shall be sufficiently demonstrated.

§77-8 General Restrictions.

- A. **Time Restrictions.** Community Demonstrations shall be restricted to the hours between 8:00AM and 8:00PM, inclusive of time needed for cleanup. Activities outside of these hours may be permitted if safety is reasonably accommodated.
- B. **Prohibited Items.** Unless otherwise permitted by state law, the possession of weapons, firearms, explosives, and other potentially dangerous instruments is prohibited during Community Demonstrations. Pursuant to Title 11, Chapter 5, Section 1239 of the Delaware Code, masks are prohibited if worn during the commission of a felony. Masks are also prohibited if worn for the purpose of disorderly conduct as defined in Title 11, Chapter 5, Section 1301 of the Delaware Code. Nothing in this section shall prohibit the wearing of face coverings for medical, religious, or expressive purposes.

§77-9 Violations and Revocation.

- A. **Violations.** Violations of a Community Demonstration permit requirement may result in a civil fine in the amount of \$250, and such violations shall include:
 - 1) Failure to obtain a permit for a Community Demonstration;
 - 2) Failure to satisfy permit conditions mandated by the Town Manager and Chief of Police as stated in §77-4 of this chapter;
 - 3) Fraud, misrepresentation or a material and incorrect statement are contained in the application.
- B. **Revocation.** The Town Manager may revoke a permit if a participant of a Community Demonstration commits any violations as stated in §77-9(A) above. In the event the Town is in a declared State of Emergency, the Town Manager may impose restrictions on or revoke Permits.

§77-10 Compliance with the Delaware Administrative Code

All Community Demonstrations which have direct and indirect impacts on the State's transportation system must comply with the Special Events Policies and Procedures for Traffic Management under Title 2, Section 2403 of the Delaware Administrative Code.

Section 2. 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 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 Town Council's intent.

Section 3. Effective Date.

This Ordinance shall become effect immediately upon its adoption by the Town Council.

Section 4. Authorization.

The Town Manager, or his or her designee, is hereby authorized and directed to take all necessary actions to implement the provisions of this Ordinance.

TOWN OF OCEAN VIEW

By: _____
Mayor

Attest: _____
Town Clerk

Introduction:

First Reading:

Second Reading: