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Topic: Special Events and Expressive Activity

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3 **AN ORDINANCE TO AMEND**
4 **THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH BY**
5 **AMENDING CHAPTER 230 BY ADDING A NEW ARTICLE RELATING TO**
6 **EXPRESSIVE ACTIVITY PERMITS.**
7

8 **WHEREAS**, the size, scale, and impact of special events within the City have created a
9 need for regulation to properly manage such events and provide appropriate safety and security
10 measures; and
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12 **WHEREAS**, the Mayor and City Commissioners desire to distinguish between events
13 constitutionally protected free speech events (“expressive activity”) and those events not
14 designed as an expression of free speech (“special events”); and
15

16 **WHEREAS**, the Mayor and Commissioners desire to amend Chapter 230 within the
17 Municipal Code of the City of Rehoboth Beach to properly distinguish between expressive
18 activity and special events.
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20 **BE IT ORDAINED**, by the Commissioners of the City of Rehoboth Beach, in session
21 met, in the manner following to wit:
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23 **Section 1.** The Municipal Code of the City of Rehoboth Beach, Delaware, 2001, as
24 amended be and the same is hereby further amended by making insertions as shown by underline
25 and deletions as shown by strikethrough to Chapter 230, as follows:
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28 **Chapter 230**
29 **SPECIAL EVENTS AND EXPRESSIVE ACTIVITY**
30

31 **Article I General Provisions**
32

33 **§ 230-1 Intent.**

34 The intent of this Chapter is to:

- 35 A. Promote the general health, safety and welfare of the community.
- 36 B. Establish guidelines under which special events and expressive activity may be held.
- 37 C. Promote the economic well-being of the community through the orderly attraction of
38 people to special events.
- 39 D. Ensure that City personnel are adequate to provide proper services for a special
40 event or expressive activity by having ample time to prepare.

41 E. Ensure that any incremental or extraordinary costs to the City are borne by the
42 promoter of the special event necessitating such costs.

43 **§ 230-2 Definitions.**

44 As used in this Chapter, the following terms shall have the meanings indicated.

45 **APPLICANT**

46 The person or persons, organization, partnership, corporation, or other entity
47 required to apply for a permit under this Chapter.

48 **EXPRESSIVE ACTIVITY**

49 A public activity where the primary purpose is to exercise the rights of assembly and
50 free speech as guaranteed by the First Amendment of the Constitution of the United
51 States and is reasonably expected to have a significant effect upon the ordinary use
52 of the public streets, rights-of-way, sidewalks, Boardwalk, beach or any other public
53 areas.

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55 **SPECIAL EVENT**

56 Any public assembly or gathering of people, except for Expressive Activity, which
57 may, because of the location, time or anticipated number of persons involved, be
58 reasonably expected to have a significant effect upon the ordinary use of the public
59 streets, rights-of-way, sidewalks, Boardwalk, beach or any other public areas. By
60 way of example and not in limitation, "special event" includes fairs, festivals,
61 parades, motorcades, bicycle rides/races, rallies, marches, processions, walking
62 events, running events, and concerts. Private social gatherings on private property or
63 funeral processions are not included.

64 **Article II Special Events**

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66 **§ 230-3 Prior notice and permit required.**

67 A. All special events are prohibited unless written notice and an application containing
68 the following information is provided to the City Manager at least eight weeks
69 before the special event is to take place:

70 (1) The character, day, date, time, duration, location, approximate number of
71 participants in the event and the number of organization members or volunteers
72 that will assist in the conduct of the special event.

73 (2) Plans illustrating the location of the special event and the location of associated
74 items such as tables, tents, portable bathrooms, and trailers.

75 (3) If the special event is to be a parade, procession, race, or similar moving
76 assembly, the proposed route thereof.

77 (4) The names, addresses, phone numbers, and emails of the persons responsible

- 78 for the special event.
- 79 (5) The purpose of the special event and the estimated number of persons and
80 vehicles expected to participate.
- 81 (6) Request for parking closure, street closure, or both, if required.
- 82 (7) The names of the participating organization and officers of the organization.
- 83 (8) Contact information for the coordinator of the special event including cell
84 phone and email.
- 85 B. The City Manager shall, within 30 days of receiving a special event application, and
86 in consideration of the scale of the special event:
- 87 (1) Approve the application and issue a permit; or
- 88 (2) Deny the application in accordance with the standards set out in § 230-4; or
- 89 (3) Approve the application and issue a permit with conditions with respect to day,
90 time, duration, location or other reasonable conditions, including payment of
91 the City's incremental costs necessary to provide those public services
92 necessitated by the special event.

93 **§ 230-4 Denial or modification of permit application.**

94 The City Manager may deny or modify a special event permit for any of the following
95 reasons:

- 96 A. The special event will significantly disrupt traffic within the City, and no
97 practical solution to such disruption is reasonably available.
- 98 B. The special event will significantly interfere with access to or egress from the
99 fire station such that the ability of the Fire Department to promptly respond to
100 emergencies would be jeopardized.
- 101 C. The location of the special event will cause undue hardship to adjacent
102 businesses, residents and/or property owners.
- 103 D. The special event will require the diversion of City employees which would
104 unreasonably deny service to the remainder of the City.
- 105 E. The special event will interfere with a previously scheduled event.
- 106 F. The applicant has submitted materially incomplete or false information.
- 107 G. Any other articulable content-neutral reason narrowly designed to advance a
108 compelling and legitimate City interest with regard to the special event.
- 109 H. The organizers of the special event have outstanding debts with the City for the

110 same or similar events.

111 **§ 230-5 Appeals; hearing.**
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113 A. Any person aggrieved by the action of the City Manager in denying, modifying or
114 revoking a permit may appeal to the Mayor and City Commissioners by filing with
115 the Mayor a written statement setting forth fully the grounds for such appeal within
116 10 days of the action of the City Manager. In the event the appeal is filed 10 or more
117 days prior to the next regular meeting of the Mayor and Commissioners, the appeal
118 shall be heard at such meeting. In the event the appeal is filed less than 10 days
119 prior to the next regular meeting of the Mayor and Commissioners, the appeal shall
120 be heard at the regular meeting subsequent to the next regular meeting unless a
121 special meeting is scheduled to hear the appeal. The Mayor shall promptly notify the
122 applicant of such hearing by telephone or email, and United States mail, to the
123 applicant at the address provided by the applicant to the City.

124 B. At such hearing, the applicant and the City Manager, who may be represented by
125 legal counsel, shall be entitled to present such evidence and arguments as they deem
126 appropriate in support of their respective positions, and may cross-examine any
127 witnesses presented. The hearing shall be audio-recorded, and the Mayor and
128 Commissioners shall articulate the reasons for its decision. Strict rules of evidence
129 shall not apply to the conduct of such hearing.

130 C. The decision of the Mayor and Commissioners regarding an appeal shall be final.

131 **§ 230-6 Permit fee.**

132 The applicant shall pay a nonrefundable processing fee of \$50 and a deposit of \$550 for a
133 special event permit. Depending upon the City services required and the City facilities
134 utilized, some or all of the deposit may be returned. However, special events of
135 significant size or scope may require an additional fee to reimburse the City for additional
136 costs relating to the special event.

137 **§ 230-7 Insurance requirement.**

138 The approval of the City Manager of an application for a special event permit may be
139 made contingent upon the applicant providing the City a certificate of liability insurance
140 covering the City of Rehoboth Beach as an additional insured, in a minimum amount of
141 \$1,000,000. In determining whether or not to require insurance under this section, the
142 City Manager shall consider, among other things, the availability of such insurance in the
143 community, the size and nature of the event, the likelihood of harm to the participants
144 and/or spectators and the financial ability of the applicant to pay for such insurance;
145 provided, however, such factors and the basis for consideration shall be content-neutral
146 and shall be narrowly designed to advance a compelling and legitimate City interest.

147 **§ 230-8 Cleanup; permit expiration; deposit to ensure cleanup.**

148 A. Cleanup. The applicant shall be responsible for the removal of all debris, litter and
149 equipment generated or caused by a special event within 24 hours of the event's
150 conclusion. If said debris, litter and equipment is not removed, as required herein,

151 the City shall have the authority to remove it at the expense of the applicant.

152 B. Permit expiration. The permit shall set forth the time period for which the permit is
153 issued. The time period for which the permit is effective shall include a reasonable
154 period of time to allow the applicant to clean up from the special event. The permit
155 shall expire at the end of the time period specified in the permit. The incremental
156 cost of any City personnel who are specifically required for cleanup following the
157 expiration of the special event shall be the responsibility of the applicant.

158 C. If, because of the nature, size or duration of the special event, the City Manager
159 reasonably concludes that the cost of the cleanup after the special event will exceed
160 \$2,500, the City Manager may require, as a condition of issuing the permit, that the
161 applicant deposit with the City the sum of \$2,500 in the form of cash, letter of credit,
162 performance bond or other means acceptable to the City. Such deposit shall be
163 returned to the applicant without interest no later than five working days after the
164 conclusion of the special event, provided that the applicant has satisfied its cleanup
165 obligations under Subsections **A** and **B** above. In the event that the applicant fails to
166 satisfy such obligations, the City Manager may use all (or as much as reasonably
167 necessary) of the deposit to effect satisfactory cleanup.

168 **§ 230-9 Interference.**

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

170 **§ 230-10 Revocation or suspension of permit.**

171 A permit issued under the provisions of this Chapter may be revoked or suspended by the
172 City Manager, without prior notice, for any of the following causes:

173 A. Fraud, misrepresentations or a material and significant incorrect statement contained
174 in the application for the special event permit or made in the course of promoting the
175 special event.

176 B. Failure to comply with any provision of this Chapter.

177 C. Conducting the special event in an unlawful manner or in such a manner as to
178 constitute a menace to the health, safety or general welfare of the public.

179 **§ 230-11 Penalties for offenses.**

180 A. Failure to properly secure a special event permit, when required, previous to the
181 initiation or commencement of the special event shall be a violation of this chapter.

182 B. For any and every violation of the provisions of this chapter, the person or persons,
183 organization, partnership, corporation, or other entity required to apply for and
184 obtain a special event permit under this Chapter shall be liable, on conviction
185 thereof, to a fine not exceeding \$150 for each and every offense. Whenever such
186 person or persons, organization, partnership, corporation, or other entity shall have
187 been notified by the City that such violation of this chapter is occurring, each day
188 that the violation shall continue shall constitute a separate offense punishable by a

189 like fine.

190 Article III **Expressive Activity**

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192 **§ 230-12 Prior notice and permit required.**

193 A. All expressive activities are prohibited unless written notice and an application
194 containing the following information is provided to the City Manager at least 36
195 hours before an expressive activity is to take place:

196 (1) The character, day, date, time, duration, location, approximate number of
197 participants in the event and the number of organization members or volunteers
198 that will assist in the conduct of the activity.

199 (2) Plans illustrating the location of the activity and the location of any associated
200 items such as tables, tents, etc.

201 (4) The names, addresses, phone numbers, and emails of the persons responsible
202 for the activity.

203 (5) The purpose of the expressive activity and the estimated number of persons and
204 vehicles expected to participate.

205 (6) The names of the participating organization and officers of the organization.

206 (7) Contact information for the coordinator of the activity including cell phone and
207 email.

208 B. The City Manager shall, within 24 hours of receiving an expressive activity
209 application:

210 (1) Approve the expressive activity application and issue a permit; or

211 (2) Deny the expressive activity application in accordance with the standards set
212 out in § 230-13; or

213 (3) Approve the expressive activity application and issue a permit with conditions
214 with respect to day, time, duration, location or other reasonable conditions.

215 **§ 230-13 Denial or modification of permit application.**

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217 A. The City Manager may deny or modify an expressive activity permit for any of the
218 following reasons:

219 (1) The applicant has submitted materially incomplete or false information.

220 (2) Any other articulable content-neutral reason narrowly designed to advance a
221 compelling and legitimate City interest with regard to the expressive activity.

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§ 230-14 Appeals; hearing.

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A. Any person aggrieved by the action of the City Manager in denying, modifying or revoking an expressive activity permit may appeal to the Mayor and Commissioners by filing with the Mayor a written statement setting forth fully the grounds for such appeal within 10 days of the action of the City Manager. Within 48 hours, the Mayor and Commissioners shall convene an appeal hearing compliant with the special meeting provisions of the Delaware Freedom of Information Act. In the event the Mayor and Commissioners are unable to convene within 48 hours, the appeal shall be heard by the Mayor. The Mayor shall promptly notify the applicant of such hearing by telephone or email, at the telephone number or email address provided by the applicant to the City.

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B. At an appeal hearing, the applicant and the City Manager, who may be represented by legal counsel, shall be entitled to present such evidence and arguments as they deem appropriate in support of their respective positions, and may cross-examine any witnesses presented. The hearing shall be audio-recorded. The Mayor and Commissioners shall articulate the reasons for the decision. Strict rules of evidence shall not apply to the conduct of an appeal hearing under this Section.

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C. The decision of the Mayor and Commissioners regarding an appeal shall be final.

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§ 230-15 Cleanup.

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The applicant shall be responsible for the removal of all of applicant’s debris, litter and/or property associated with an expressive activity upon conclusion of the activity. If said debris, litter and/or property is not removed, as required herein, the City shall have the authority to remove it at the expense of the applicant.

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§ 230-16 Permit expiration.

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Permit expiration. The expressive activity permit shall set forth the time period for which the permit is issued. The permit shall expire at the end of the time period specified in the permit.

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§ 230-17 Interference.

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No person(s) shall knowingly disrupt or interfere with any duly permitted expressive activity.

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§ 230-18 Revocation or suspension of permit.

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An expressive activity permit issued under the provisions of this Chapter may be revoked or suspended by the City Manager, without prior notice, for any of the following causes:

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A. Fraud, misrepresentations or a material and significant incorrect statement contained in the application for the special event permit or expressive activity permit or made in the course of promoting the expressive activity.

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- 260 B. Failure to comply with any provision of this Chapter.
- 261 C. Conducting the expressive activity in an unlawful manner or in such a manner as to
- 262 constitute a menace to the health, safety or general welfare of the public.

263 **§ 230-19 Penalties for offenses.**

264 A. Failure to properly secure an expressive activity permit, when required, previous to

265 the initiation or commencement of the expressive activity shall be a violation of this

266 chapter.

267 B. For any and every violation of the provisions of this chapter, the person or

268 persons, organization, partnership, corporation, or other entity required to apply for and

269 obtain an expressive activity permit under this Chapter shall be liable, on conviction

270 thereof, to a fine not exceeding \$150 for each and every offense. Whenever such person

271 or persons, organization, partnership, corporation, or other entity shall have been notified

272 by the City that such violation of this chapter is occurring, each day that the violation

273 shall continue shall constitute a separate offense punishable by a like fine. **Section 2.**

274 The Rehoboth Beach Police Department shall prepare an application form and

275 procedural guidelines consistent with the provisions of this Ordinance.

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277 **Section 3.** If any provision of this Ordinance shall be deemed or held to be invalid or

278 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect

279 any other provision of this Ordinance which may be given effect without such invalid or

280 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to

281 be severable.

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283 **Section 4.** This Ordinance shall become effective immediately upon its adoption by the

284 Commissioners of the City of Rehoboth Beach.

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286 Adopted by the Commissioners

287 of the City of Rehoboth Beach

288 _____, 2019

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294 Secretary of the Commissioners of

295 the City of Rehoboth Beach

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297 **SYNOPSIS:** This Ordinance amends Chapter 230 of the Municipal Code of the City of

298 Rehoboth Beach to distinguish between constitutionally protected activity (“expressive activity”)

299 and special events not constitutionally protected (“special event”) within the City.