

## Amendment to the Ocracoke Development Ordinance

### Sec. 36-185 Regulation of Outdoor Sales

(a) **The intent and purpose** of this section is to establish minimal regulations and restrictions intended to ensure that outdoor sales; do not interfere with the orderly and safe movement of pedestrian and vehicular traffic; do not interfere with the proper maintenance of parking and yard areas; do not cause congestion in the streets or public rights-of-way; are conducted within structures safe for public occupancy when structures are used.

At the same time, these regulations intend to recognize the tradition of outdoor sales as a part of Ocracoke's economy and also recognize and encourage the responsible development of outdoor sales establishments as an entrepreneurial incubator.

(b) **Definitions:** For the purpose of this section the following definitions shall apply:

(1) **Outdoor Sales:** The display and/or sale of any merchandise, commodities or product where primary transactions are conducted a) in the open air; b) within a temporary structure, or: c) within a kiosk or similar structure.

(2) **Temporary Structure:** an enclosure or covering which is readily dismantled or readily moved, including, but not limited to tents, canopies, tarps, trailers, food trucks, lean-tos, pre-fabricated sheds, sheds and similar structures. This definition shall apply to any of these and similar structures even if, at a later date, the structure is modified, strengthened or made more permanent.

(3) **Permanent Installation:** a structure attached to the ground by in-ground piers, pilings or posts, at least 3 ½" in cross section, and set such that they are not removable without the use of digging tools or equipment.

(4) **Kiosk:** a small, free-standing non-residential structure which is primarily intended as a place for the conduct of sales, rentals, information exchange, self-service, etc. Also referred to as a booth, portico, pavilion, venting station, etc.

(c) **Grandfathered Uses:** Outdoor sales establishments in existence on the approval date of this amendment shall be exempt from sections of this amendment as follows:

(1) Permanent installations in existence on the approval date of this amendment including certain signs, displays, kiosks, booths, etc. may remain in their existing locations without regard to the setback requirements in this amendment.

(2) Outdoor sales establishments in existence on the approval date of this amendment shall not be subject to the section of this regulation titled "(i) Parking".

(3) Except as (1) and (2) above, existing outdoor sales establishments shall be subject to the provisions of this amendment.

(d) **Exceptions:** The following categories of outdoor sales are not subject to the regulations in this section of the ODO: temporary yard and rummage sales and the like; the outdoor seating portion of a restaurant which is otherwise not an outdoor sales establishment; sales organized and operated by anyone under the age of 16; vending machines and self-service sales taking no more than none square feet; sales as a part of a short-term festival, parade, non-profit fundraising event and the like.

All other outdoor sales shall be considered regulated outdoor sales establishments. The following regulations shall apply to regulated outdoor sales and shall be enforceable by the ODO Enforcement Officer.

(e) **Permit Required:** All regulated outdoor sales establishments shall be required to apply for an ODO permit by the regular ODO permit application. Approval of that application shall constitute approval to conduct an outdoor sales establishment under these regulations. Where a single owner operates more than one outdoor sales establishment, a separate permit must be acquired for each location. Where more than one point of sale may exist on a single lot, each establishment must acquire its own permit.

(f) **Location:** Regulated outdoor sales may take place anywhere within the Village of Ocracoke as long as the owner of the outdoor sales establishment is either the owner of the land it sits on, or has the expressed written permission of the owner of the land it sits on. At the order of ODO Enforcement Officer the owner of the outdoor sales establishment shall provide any documentation necessary to establish compliance with these regulations.

(g) **Setbacks:** All structures, signage, displays, etc. associated with outdoor sales shall be subject to the following minimum setback requirements: from any paved public street – ten feet from the edge of the asphalt pavement; from any unpaved public street – four feet from the road edge; from side and rear property lines – eight feet; from any structures, signage, displays, etc. associated with another outdoor sales establishment – eight feet.

(h) **Safe Passage:** In addition to the minimum setback requirements above, all structures, displays, merchandise, products, signage, flags, banners, etc. Shall be arranged such that no portion shall block or hinder established public pedestrian and bicycler passageways or obstruct reasonable sight-lines required for safe vehicle passage at driveways and intersections. The application of this paragraph to a particular site shall be at the order of the ODO Enforcement

Officer. On request of the affected business owner, the order of the ODO Enforcement Officer may be subject to additional review, in consultation with the ODO Enforcement Officer, the Hyde County Sheriff's Office and the business owner. Final determination shall be by the ODO Enforcement Officer. All rights and processes for appeal, as outlined in the ODO shall remain in effect.

(i) **Parking:** All regulated outdoor sales establishments shall designate at least two readily accessible parking places. Both designated parking places shall be kept available for customer parking during hours of operation. Such designated parking places shall not reduce the available parking of another business or residence such that it may fall below its parking requirements as set out in the ODO. If the designated parking spaces are on land which does not belong to the owner of the outdoor sales establishment, a letter of agreement from the land owner shall verify the designation.

(j) **Off-site Impacts:** regulated outdoor sales establishments shall minimize off-site impacts. No lighting shall shine directly onto an adjacent residence. Trash and garbage, associated with the business, which is not contained, whether on-site or off, shall be the responsibility of the business to clean up daily. Aggressive hawking, noise, music, signage, flags, etc. shall not create a nuisance.

(k) **Related Sections of the ODO:** Outdoor sales regulated under this section shall not be subject to the provisions of Section 36-182 nor Section 36-177 of the ODO.

(l) **Other Codes:** The ODO Enforcement Officer shall call for the enforcement of all existing building, electrical, fire, health department codes and the codes and regulations of other jurisdictions as may apply to any portion of a regulated outdoor sales establishment.

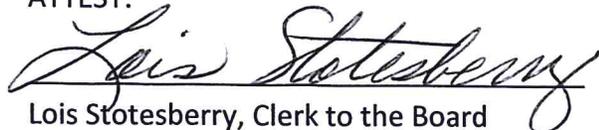
A Public Hearing on this Amendment to the Ocracoke Development Ordinance was held on June 3, 2013.

This Amendment to the Ocracoke Development Ordinance was adopted on the 3<sup>rd</sup> day of June, 2013.

HYDE COUNTY BOARD OF COMMISSIONERS

  
Barry Swindell, Chairman

ATTEST:

  
Lois Stotesberry, Clerk to the Board

