

**BOROUGH OF AVALON  
CAPE MAY COUNTY  
NEW JERSEY**

ORDINANCE No. 764-2017

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF THE BOROUGH OF AVALON, 2013 (LICENSES AND PERMITS) SECTION 10-4 (HAWKING AND PEDDLING) AND CHAPTER 9 OF SAID CODE (PARKS, BEACHES AND RECREATION FACILITIES) TO PROHIBIT HAWKING, PEDDLING AND VENDING TRUCKS WITHIN THE BOROUGH OF AVALON WITH CERTAIN EXCEPTIONS FOR VETERANS AND EXEMPT FIREMEN AND AMENDING THE FOLLOWING ORDINANCES: 655-2012; 695-2014; AND 738-2016

**WHEREAS**, for the reasons hereinafter set forth, the Borough Council has determined to limit vending, as defined herein, to veterans and exempt volunteer firemen and to prohibit all other forms of hawking and peddling;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL of the Borough of Avalon, in the County of Cape May and State of New Jersey as follows:**

**SECTION 1.** The provisions of Chapter 10 of the Code of the Borough of Avalon, 2013 (“Borough Code” Sections 10-4.1 through 10-4.13 13 are hereby repealed.

**SECTION 2.** Chapter 10 of the Borough Code is amended and supplemented, in part, and as amended and supplemented shall hereafter read and provide as follows:

**10-4 PEDDLERS AND HAWKERS.**

**10-4.14 Findings of Fact.**

A. The Borough has a permanent year-round population of approximately two (2) thousand residents which, during the period from Memorial Day through mid-September increases to over thirty (30) thousand inhabitants. This increase in population because of summer residents and visitors greatly increases traffic congestion, demands for on-street parking, as well as bicycle and pedestrian traffic. Vending trucks which sell ice cream and other food products add to the vehicular and pedestrian traffic congestion by parking to sell products and thereby also creating safety concerns. In the exercise of its judgment and discretion, and in the exercise of the authority granted to all municipal governments pursuant to State Statute (N.J.S.A. 45:24-9 *et seq.*), Borough Council has determined that it is in the interest of public safety and welfare to prohibit such vehicles from operating in the Borough except for Veterans and Exempt Volunteer Firefighters who have special rights and privileges pursuant to State Law which the Borough fully recognizes, respects and supports.

B. Vending trucks which are motor vehicles used for the sale and distribution of ice cream, ice cream products and food products have, in the past, used those street- ends at the beach. Those streets that end at the beach or the approached thereto have no outlet. To exit those street-ends, those trucks must either turn around or back out to the next through-street. This poses a threat to pedestrians walking to the beach and those pedestrians frequently involve small children and children being pushed in strollers which are difficult to observe by drivers of vehicles making turns or backing up.

C. The Borough’s sidewalk ordinance requires sidewalks that are four (4) feet in width. That width is insufficient to permit the placement of vending units or equipment on the sidewalk without impeding the passage of pedestrians thereby creating a nuisance as well as a direct impact on public health, safety and convenience. In those areas of the Borough where the sidewalk does exceed four (4) feet – primarily in the Business Zones of the Borough – the seasonal congestion is such that vending units cause a heightened concern about safety and therefore must be prohibited in those areas.

D. Hawking (selling by outcry) and any signaling device, including bells, music, and other means of attracting customers is disruptive of the peace and enjoyment that all residents and visitors are entitled to enjoy. It is determined to have a negative impact on the public health, safety and welfare. As such, it is unnecessary and therefore intended to be prohibited henceforth. (Ord. No. 764-2017)

**Editorial Note:** Hawking, peddling and vending may be regulated by municipal ordinance on public streets and highways pursuant to authority conferred in N.J.S.A. 45:24-9 et seq.

#### **10-4.15 Definitions.**

As used in this section:

**Hawker** shall mean a person who sells by outcry.

**Equipment** shall mean any non-motorized cart or trailer or trailer-type vehicle (as defined in Chapter 20) licensed by the New Jersey Motor Vehicle Commission pursuant to Title 39 or any other non-motorized means of conveyance which is not licensed by the Motor Vehicle Commission and which is used to engage in or facilitate the act of vending by Veterans or Exempt Volunteer Firemen. It does not include any motor vehicle as that term is defined in Title 39 of the New Jersey Statutes. (Ord. No. 764-2017)

**Exempt Fireman** shall mean every exempt member of a volunteer fire department, volunteer fire engine, hook and ladder, hose, supply company or salvage corps, of any municipality or fire district in this State, who holds an exemption certificate issued to him/her as an exempt member of any such department, company or corps, and who is a resident of this State. [Source: N.J.S.A. 45:24-9 (b)] (Ord. No. 764-2017)

**Goods** shall have the same meaning as “ware or wares”.

**License Holder** shall mean a veteran or exempt volunteer firemen issued a special vending license by the County Clerk pursuant to the provisions of Title 45 of the New Jersey Statutes] (Ord. No. 764-2017)

**Peddler** shall mean a person who travels about with goods, wares, and merchandise for retail sale, rental or distribution from a vehicle or any other means of conveyance. The term “merchandise” shall include any objects, wares, goods, commodities, services or anything offered, directly or indirectly, to the public for sale or rental or distribution. [Source: N.J.S.A. 56:8-1(c)] (Ord. No. 738-2016 § 2)

**Sale** shall mean and include any sale, rental or distribution, offer for sale, rental or distribution or an attempt, directly or indirectly, to sell, rent, or distribute. [Source: N.J.S.A. 56: 8-1(e)] (Ord. No. 738-2016 § 2) The term shall also include “vending”. (Ord. No. 764-2017)

**Vendor** shall mean a veteran or an exempt volunteer firemen who has been issued a license to vend by the County Clerk pursuant to Title 45 of the New Jersey Statutes. (Ord. No. 764-2017)

**Veteran** shall mean every person who has been honorably discharged from the active military service of the United States, who is a resident of this State. [Source: N.J.S.A. 45:24-9 (a)] (Ord. No. 764-2017)

**Vending** shall mean the sale of wares by licensed Veterans and Exempt Firemen from equipment as defined herein and from specific designated locations during specific designated hours within the Borough of Avalon. (Ord. No. 764-2017)

**Vending Unit** – see definition of “Equipment” herein. (Ord. No. 764-2017)

**Ware or Wares** shall mean and include both merchandise and services as well as food and food products ice cream and ice cream products. The term(s) shall include any piece or kind of goods that a store, merchant, peddler or other vendor or seller has to sell, rent or distribute and shall include any skill or service that one seeks to sell, rent or distribute. (Ord. No. 738-2016 § 2); Ord. No. 764-2017)

Cross Reference: See Sections 9-6.3 of Code of the Borough of Avalon, 2013.

(2000 Code § 10:3.1; Ord. No. 738-2016 § 2)

#### **10-4.16 HAWKING AND PEDDLING PROHIBITED**

- A. It shall be unlawful for any person or entity to engage in peddling or hawking within the Borough of Avalon (Ord. No. 764-2017)
- B. Without limiting the generality of this prohibition against hawking and peddling, and for clarification purposes only, those vehicles commonly referred to as “food trucks” which are motor vehicles used in the sale of food, ice cream, ice cream products, and other wares are specifically prohibited from vending within the Borough of Avalon. (Ord. No. 764-2017)

#### **10-4.17 Vending by Veterans and Exempt Firemen; Conditions; Locations.**

[Ord. No. 764-2017]

- A. Veterans and Exempt Firemen, who have obtained a valid license issued by the county clerk in accordance with the provisions of Title 45 of the New Jersey Revised Statutes, shall be entitled to sell wares as defined herein, only from the following locations and from none other and then only between the hours of 11 am and 5 pm, prevailing time including Sundays and holidays:
  - (1). From 9th Street to 12th Street on Dune Drive (Avalon Recreation Field) and west on 12th Street for a distance of one hundred (100) feet from the curb line on Dune Drive.
  - (2). On the east side of Ocean Drive between 71st and 74th Streets adjacent to Armacost Park.
- B. Vending is prohibited from all other locations within the Borough including the public beach and the public boardwalk and the approaches thereto.
- C. Hawking, as defined herein, is prohibited at all times and in all locations.
- D. Vending by Veterans and Exempt Volunteer Firemen shall be conducted from equipment which shall be stationary when vending and parked curb-side at one of the locations specified herein. Vending units shall not be placed or located on the public sidewalk. Parking shall be in accordance with the requirements of Title 39 of the New Jersey Statutes. Failure to comply with this section shall subject the person vending to the penalties prescribed in said Title 39.
- E. Without limiting the general prohibition against hawking and peddling and for clarification purposes only, it shall be unlawful for veterans and exempt firemen to peddle, vend, solicit, or canvass on the beach, boardwalk and approaches thereto. This prohibition shall also apply to street ends. (Ord. No. 764-2017)
- F. No veteran or exempt fireman who is otherwise authorized by State law to vend or peddle shall have any exclusive right to any location, nor shall such person be permitted to operate in any of the locations specified herein when such operations might create a threat to the health, safety or welfare of the general public. For the purpose of this subsection, the judgment of Police Officer, exercised in good faith, shall be deemed conclusive. (2000 Code § 10:3-4; Ord. No. 738-2016 § 2; Ord. No. 764-2017)

- G. The vending authorized by this chapter shall be conducted by the veteran or exempt firemen without music or any other sound or sound effects, whether amplified or not, including any voice outcry or call-out by the vendor of any nature whatsoever. (Ord. No. 764-2017)
- H. The vending authorized by this chapter shall be conducted by and restricted to the individual veteran or exempt firemen to whom the required license is issued by the County Clerk pursuant to Title 45 of the New Jersey Statutes. (“License Holder”)Such veteran or exempt firemen shall conduct the vending operation personally and individually and shall not engage any employees, agents or associates, nor shall the vending be conducted through any form of corporation or partnership including, but not limited to, a corporation, limited liability company (LLC) partnership, limited partnership or any other type of business entity. (Ord. No. 764-2017)
- I. Each License Holder shall have an ownership or lease interest in only one vending unit and may operate only said vending unit and none other. (Ord. No. 764-2017)
- J. Any veteran or exempt firemen (“License Holder”) may be assisted by up to one unlicensed helper. The, License Holder however, must remain at the vending unit at all times, except the License Holder may leave for short periods of time up to 20 minutes to take care of other business, but in the event that such licensed vendor is away from the vending unit for more than 20 minutes, then the vending unit must be closed for business during the vendor’s absence. The licensed vendor shall not leave or be away from the vending unit on more than two occasions during any day. (Ord. No. 764-2017)

**10-4.18 Time Restrictions.**

Veterans and Exempt Firemen, who have obtained a valid license issued by the county clerk in accordance with the provisions of Title 45 of the New Jersey Revised Statutes, shall be entitled to sell wares as defined herein, only between the hours of 11:00 am and 5:00 pm, prevailing time, including Sundays and holidays. (Ord. No. 764-2017)

**10-4.19 Certain Authorized Sales.**

[Ord. No. 764-2017]

This section prohibiting hawking and peddling shall not be construed to include or apply to:

- a. Restaurants and other food establishments (such as pizza restaurants) which offer off-premises delivery of prepared food items to customers who pre-order items for delivery. Any such delivery shall be accompanied by a delivery ticket as that term is defined below and shall be intended for delivery to those locations specified in section (b) below.
- b. Deliveries under section (a) hereof may be made to any of the following:
  - (i) any residence or business or commercial enterprise in the Borough;
  - (ii) any building or construction site in the Borough;
  - (iii) any park or other recreational facility in the Borough;
  - (iv) to the beach, or boardwalk, provided that any such delivery to the beach or boardwalk shall not include ice cream, ice cream products or water ice as the sale of such items is restricted to any vendor holding an exclusive contract with the Borough to sell such items.
- c. The delivery of groceries or food pursuant to a pre-order provided that the order is accompanied by a delivery ticket as that term is defined below.
- d. The delivery of food, groceries, or pre-packaged food by mail or other recognized shipping service such as United Parcel Service, Federal Express or other similar shipping service or common carrier.

- e. "Delivery Ticket" shall mean a written or digital order form which shall be in the possession of the delivery person and produced on demand of any Police Officer or the Code Enforcement Official and shall include the following information:
- i. Proof that the product was pre-ordered for delivery within the Borough;
  - ii. Delivery slip in possession of the driver indicating;
  - iii. The date and time of order;
  - iv. Name of vendor;
  - v. Name of patron ordering product;
  - vi. Address of patron;
  - vii. Phone number of patron;
  - viii. List of all items ordered;
  - ix. Total cost of items being delivered;
  - x. Name or initials of the employee taking the order for such items.

Failure to produce such delivery ticket shall constitute a violation of this chapter.

The vehicle used for the delivery of such items shall not be equipped for any on-board food preparation of any type or description.

- f.. Veterans and Exempt Firemen, who have obtained a valid license issued by the county clerk in accordance with the provisions of Title 45 of the New Jersey Revised Statutes, shall be entitled to vend but shall be required to comply with all applicable sections of this Chapter.

#### **10-4.20 Inspection of Equipment.**

The equipment used by Veterans and Exempt Firemen to vend edible food products, confections and other related commodities, shall be maintained in a clean and sanitary manner and be subject to inspection, which inspections may be made at any time. All such equipment shall satisfy all applicable health code requirements and be licensed by the appropriate regulatory authority. Any violation found and not immediately corrected, shall be grounds for such provider to be prohibited from doing business in the Borough of Avalon until such violations are abated. (2000 Code § 10:3-8; Ord. No. 655-2012; Ord. No. 764-2017)

#### **10-4.21 Reserved**

#### **10-4.22 Insurance; Borough of Avalon as Additional Insured.**

Any veteran or exempt firemen vending within the Borough of Avalon shall furnish to the Licensing Clerk a Certificate of Insurance indicating that such person is covered by a policy of general liability insurance, with minimum limits of five hundred thousand (\$500,000.00) dollars for injury to any one (1) person and one million (\$1,000,000.00) dollars for injury to more than one (1) person and property damage limits of one hundred thousand (\$100,000.00) dollars. Such person shall further provide to the Licensing Clerk an appropriate endorsement indicating that the Borough of Avalon is designated as an additional insured. (2000 Code § 10:3-11; Ord. No. 655-2012; Ord. No. 764-2017)

#### **10-4.23. Expiration of Existing Licenses.**

Any previously issued municipal license for hawking and peddling and which is in effect on the effective date of this ordinance shall expire on December 31, 2017, as scheduled, and shall not be renewed or extended beyond the expiration date. (Ord. No. 764-2017)

#### **10-4.24 Enforcement**

It shall be the duty of any Borough Police Officer or the Borough Code Enforcement Official to require any person seen vending to produce a valid vending license, issued by the Clerk of Cape May County, and to enforce the provisions of this section against any person found to be violating the same. (2000 Code § 10:3-6; Ord. No. 764-2017)

The Cape May County Department of Health retains jurisdiction to inspect any vehicle or other equipment used for the sale or other distribution of edible food products as more specifically specified in subsection 10-4.20 of this chapter. (Ord. No. 764-2017)

**10-4.25 to 10-4.29      Reserved**

**10-4.30      Violations; Penalty.**  
[Ord. No. 764-2017]

- A. Any person or entity violating this section or any agent, servant or employee of such person or entity who violates any of the provisions of this section shall, upon conviction, in the Municipal Court be subject to the penalty stated in Chapter 1, Section 1-5. The aforesaid penalties may be imposed in addition to any other penalty provided elsewhere herein, including, but not limited to, the revocation of a license. The penalties imposed by this section shall be exclusive of any penalty which may be imposed under State Law. (2000 Code § 10:3-13)
- B. In addition to the penalties proscribed in section (A) above, and pursuant to N.J.S.A. 45:24-13, any judge of the municipal court, after due notice and a hearing, shall have power to order the cancellation of any license issued to any veteran or exempt volunteer firemen under the authority of subsection a. of R.S. 45:24-9 if:
- 1). the license has been sold or transferred by the original licensee;
  - 2). during the term of the license, the licensee has been convicted of a crime and this conviction relates adversely to the activity for which the license was granted; or
  - 3). during the term of the license, the licensee has been found guilty of violating a municipal ordinance and this violation relates adversely to the activity for which the license was granted.

The judge of the municipal court shall mail the order of cancellation to the county clerk in whose county the license was granted and thereupon the county clerk shall cancel the same of record and file the order of cancellation in his office and send notice of such cancellation to the office of the adjutant general. Application for a new license may be made at any time after the expiration of one year from the date of the cancellation.

Any licensee holding a license issued under the authority of subsection a. of R.S. 45:24-9 who shall sell or transfer such license shall be guilty of a crime of the fourth degree and punished accordingly. A "transfer" has occurred under this section if the original licensee knowingly permits someone other than himself to use the license to engage in the activity for which the license was granted. [Amended by L.1984, c. 194, s. 3, eff. Nov. 27, 1984].

**SECTION 3.** Chapter 9 of the Borough Code Section 9-6 thereof is amended and supplemented, in part, and as amended and supplemented shall hereafter read and provide as follows:

**9-6.3      Definitions.**

As used in this section:

**Articles**      [no change or modification]

**Beach**      [no change or modification]

**Boardwalk and Approaches thereto**      [no change or modification]

**Goods, wares or merchandise** shall have the meaning set forth in subsection 10-4.14. (Ord. No. 764-2017)

**Hawking** shall have the meaning set forth in subsection 10-4.14. (Ord. No. 764-2017)

**Peddling** shall have the meaning set forth in subsection 10-4.14. (Ord. No. 764-2017)

**9-6.5      Peddling.**

It shall be unlawful to hawk or peddle any articles, goods, wares or merchandise within the Borough of Avalon except as may be permitted by Chapter 10 Section 4-4.14 et seq. (Ord.No. 764-2017)

Editorial Note: Hawking and Peddling in the Borough are prohibited with limited exceptions pursuant to Ord. No. 764-2017. See Chapter 10-4 of this Code.

**SECTION 4.** Except as herein amended and supplemented by this Ordinance, all of the other terms and provisions of Chapters 9 and 10 of the Code of the Borough of Avalon, 2013 shall remain in full force and effect.

## **SECTION 5. OTHER ORDINANCES**

The following Ordinances are hereby amended to the extent necessary to conform to the provisions of Sections 2 and 3 hereof:

Ordinance No. 655-2012,  
Ordinance No. 695-2014, and  
Ordinance No. 738-2016

To the extent that any of these foregoing ordinances are in conflict with the provisions of Sections 2 and 3 hereof and Ordinance 764-2017, the same are hereby repealed in accordance with the provisions of Section 6 hereof.

**SECTION 6. REPEALER.** All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

**SECTION 7. SEVERABILITY.** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 8: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon final adoption and publication as required by law.

### **NOTICE OF PENDING ORDINANCE**

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on October 11, 2017. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 25<sup>th</sup> day of October, 2017 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

MARIE J. HOOD  
Borough Clerk