

ORDINANCE NO. 19-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE VII OF CHAPTER 10 BUSINESSES, OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA “STREET PERFORMERS”, PROVIDING FOR REVISIONS TO THE APPLICATION REQUIREMENTS, PERMIT CONDITIONS, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CODIFICATION AND SCRIVENER’S ERRORS, CONFLICTS, AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council finds that the existence in the Town of street performers provides a public amenity that enhances the character of the Town; and

WHEREAS, the Town seeks to encourage such performances to the extent that they do not interfere with the reasonable expectation of residents and businesses to the enjoyment of peace and quiet in their homes or to the ability of businesses to operate; and

WHEREAS, the Town Council recognizes that street performers seek to and do draw crowds to their performances which may create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks or may impede the response time of safety personnel; and

WHEREAS, the Town is cognizant that street performers may be engaged in activities protected by the First Amendment, and, as such, the Town is limited to imposing reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public; and

WHEREAS, the Town, in permitting street performances, seeks to balance the interests of the performers, the residents and businesses in the Town; and

WHEREAS, the Town had previously adopted Ordinance 12-09 regulating street performers (as amended by Ordinance 15-09), and now seeks to further amend its regulations to provide for additional detail and clarity to those regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS: ¹

Section 1. The above recitals are true and correct and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Chapter 10, Article VII, Street Performers, of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended as follows:

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

ARTICLE VII – STREET PERFORMERS

Sec. 10-190. Definitions. The following words, when used in this Article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Perform means ~~and includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing, reading, puppetry, comedy, acrobatics, character impressions, creating visual art, and other similar types of public performance done for the purpose of public entertainment or amusement~~ acting, art, dancing, juggling or magic. Any other activity must be specifically stated on the permit application and approved by the Town.

Performer means an individual who performs in a public area, for the purpose of providing public entertainment, and to whom a permit has been issued for that purpose by the Town.

Public area means and includes any public sidewalk, alley, street, public park, public right of way or easement located in the Town.

Performance site area means that performers are only allowed within designated sites on a first come, first served basis.

Sec. 10-191. Prohibition.

No person may perform in any public area in the Town without a permit issued pursuant to Section 10-192 of this Article.

Sec. 10-192. Performer's Permit Application; Permit Conditions.

- (a) The Town ~~may will~~ issue ~~a limited number of up to (12) annual~~ annually eight (8) street performer permits for the town owned Times Square area on a first come, first serve basis to persons who make proper application, meet the requirements of this Article, and pay the permit fee established under the Town Fee Schedule. ~~The number of permits will be determined during the annual budget process and may be adjusted as deemed necessary.~~ Those applicants not receiving a permit due to the limit being reached will be placed on a waiting list.
- (b) Performers may submit an application to Town Council for a use permit for other public areas.
- (c) The information required on a permit application include the performer's contact information and a description of the type of performance activities the performer intends to conduct. All performances are subject to performance review and Town approval. Each applicant will also be subject to a countrywide criminal records check.

- (d) The Town reserves the right to deny a permit for any reason, including, but not limited to if the applicant has been convicted of any act that would represent a threat to public safety or security for the viewing audience. An automatic denial shall be issued in the event of open or unpaid code enforcement cases, Town parking permit violations, or other outstanding unresolved permit issues. Permit denials may be appealed to the Town Council. An application will be automatically denied if a criminal records check produces any one or more of the following offenses.
- (1) Felony convictions
 - (2) Conviction of a sexual related offense
 - (3) Alcohol or drug convictions in the past 5 years
 - (4) More than 5 misdemeanors in the past 5 years
- (e) All street performers permits will be issued based on the Town's fiscal year and will expire at midnight on September 30 of each year. Permit applications will be accepted September 1. Permit applications received after September 30th shall be charged two times the rate in the Town Fee Schedule.
- (f) Permits may be issued, upon Town manager approval, to any minor under the age of sixteen (16), provided the application for the permit is accompanied by a written consent signed by the parent, legal guardian, or custodian of any minor. Minors will not be permitted to perform during the hours school is in session. The parent or legal guardian of a minor must also complete and pay for a criminal records check. If more than one parent or guardian will accompany the minor, each must complete a criminal records check. Criminal records checks after the first will be charged at the actual cost of the criminal records check.
- (g) Street Performer permits are non-transferable.
- ~~(h) Groups will perform under one permit, however all members must complete an application and criminal records check. Criminal records checks after the first will be charged at the actual cost of the criminal records check~~ Each member of a group will require one permit.
- (i) As a condition to issuance of the street performer permit, the applicant must agree to indemnify, defend, and hold harmless the Town and its officers, employees and agents from any suit, actions or claims arising out of or in any way connected to the activities permitted pursuant to this Article, except for any claims or liability arising solely from the negligence or misconduct of the Town, its officers, employees or agents.

- (j) Performers must obtain insurance. Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract/permit, shall be of the following for and limits:
 - (1) Workers Compensation Coverage for all employees to performers that comply with Statutory Limits in compliance with the applicable statutory limits of State Florida and Federal laws;
 - (2) Commercial General Liability Insurance with minimum limits of \$1,000,000 each per occurrence combined property and bodily injury single limit or \$1,000,000 each occurrence/\$2,000,000 general aggregate; (3) and Crime Coverage with a minimum limits of \$200,000.
 - (3) The establishment of minimum limits of insurance by Town does not reduce or limit the liability or responsibilities of Performer Service Provider.

Sec. 10-193. Display of Permit.

Permits must be ~~displayed and must visibly display their permit~~ visibly displayed at all times while performing on Town property. Permits will contain the name, photograph and permit number of the applicant and the year for which the permit is valid.

Sec. 10-194. Permitted Performances; Restrictions.

- (a) Street performances are limited to ~~these~~ performance site areas as depicted on the Street Performer Performance Map, hereafter known as Exhibit A. Performances will only be allowed on a daily, first come, first served basis. No permit holder will make efforts to reserve a location, and each permit holder will abandon a location at the end of his or her working day, including the removal of all personal property. There will be no permanent physical alteration of the public space.
- (b) Two or more street performers may combine their performances into one integrated performance. A map of the allowable performance areas will be provided upon issuance of a permit.
- (c) Street performers will abide by all requirements of the Town's noise ordinance
- (d) Street performers will not create any undue interference with the passage of the public through a public area. If a performer attracts a crowd sufficient to obstruct the public way, a Lee County Sheriff's Deputy or a Town employee may disperse the crowd that is creating the obstruction. The Deputy or Town employee may also ask the performer to temporarily suspend a performance or to move his or her location when such action is

necessary to protect the public safety, or public order, or restore unobstructed passage of the public through a public area.

- (e) Performances including a fire must be ~~reviewed~~ authorized by the Fort Myers Beach Fire Department prior to permit issuance.
- (f) ~~Performers will not engage in the~~ The application of permanent, semi-permanent (henna) tattoos or body piercing ~~is prohibited not a performance that is allowed.~~
- (g) Animals may not be registered as performers and may not be part of any performance.
- (h) Performances involving dangerous weapons are not permitted.
- (i) Performances will not include any obscene material.
- (j) Performers will not harass or coerce any member of the public.
- (k) Performers will not block access to the entrance of any building, bicycle rack, or trash receptacle.
- (l) Performers will not connect to any electrical outlets or power sources owned by the Town or any private business, or utilize any electric extension cords.
- (m) Performers will not perform in a ~~street unless such street has been closed to vehicular traffic~~ public area or undesignated area not shown as a performance site on the map attached to their permit.
- (n) Permitted Special Events, including the Sunset Celebration, take precedence over street performances. Street Performers will not perform within fifty feet (50') of any area that has been permitted for a Special Event pursuant to Chapter 22, Town of Fort Myers Beach Code of Ordinances; unless such street performance will not interfere with the permitted special event. No performances are authorized on July 4th or December 31st after 7 pm.
- (o) Performances, including preparation, may take place in any designated performance site area, as depicted in Exhibit A, but only between the hours of 10:00 A.M. ~~and 9:00 p.m. on Sundays through Thursdays, and between the hours of 10:00 a.m. and 11:00 P.M. on Fridays and Saturdays.~~
- (p) No street performer ~~may~~ shall sell goods or services.

- (q) Performers who are minors must have a parent or legal guardian with them at all times while performing any street performance permitted under this Article.

Sec. 10-195. Acceptance of Contributions.

- (a) A performer may accept voluntary contributions of money or property at a performance.
- (b) Contributions may be received in any receptacle of reasonable size. The use of such open receptacle evidencing intent to receive money is prohibited unless a street performance is in preparation, underway, or the performance has recently concluded.
- (c) The receptacle may have a sign which invites contributions, provided such sign is no larger than 12 inches by 18 inches and does not suggest a contribution amount.

Sec. 10-196. Permit Suspension and Revocation; Appeal.

- (a) The Town Manager may suspend or revoke a permit for one or both of the following reasons:
 - (1) A performer who is found to have obtained a permit through fraud or through material misrepresentation on the permit application.
 - (2) A performer who violates any of the provisions of this Article.
- (b) Any revocation of a permit under this section will be for the duration of the current permitting period and for the next subsequent permitting period.
- (c) The decision of the Town Manager to suspend or revoke a permit may be appealed to the Town Council. The appeal must be filed within five (5) business days of permit revocation. Such appeal must be requested in writing and will be heard by the Town Council at the next available Town Council meeting. The performer may not perform during the appeal process.
- (d) Revocation or suspension of a permit will result in the performer's permit becoming available to the Street Performer's permit waiting list, following the expiration of the appeal request time period or the denial of the appeal.

Sec. 10-197. Violation—Penalty.

Engaging in a street performance without a permit will result in the violator being subject to such penalties and remedies as provided by Code, including but not limited to, being issued a Trespass Warrant from Town property.

Section 3. The Town Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Town Manager without the need for a public hearing.

Section 4. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

Section 5. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

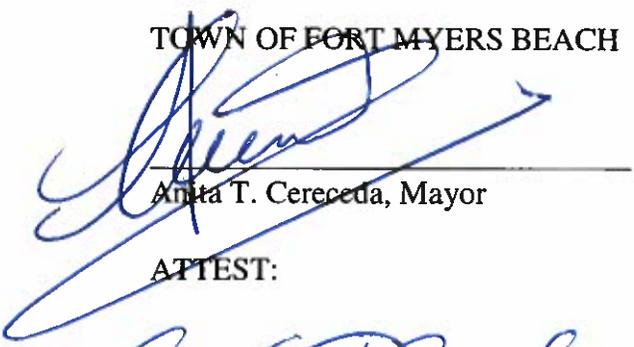
Section 7. This ordinance will take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember Joanne Shamp and seconded by Councilmember Rexann Hosafros and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 19th day of August, 2019 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



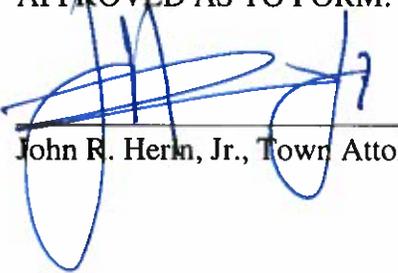
Anita T. Cereceda, Mayor

ATTEST:



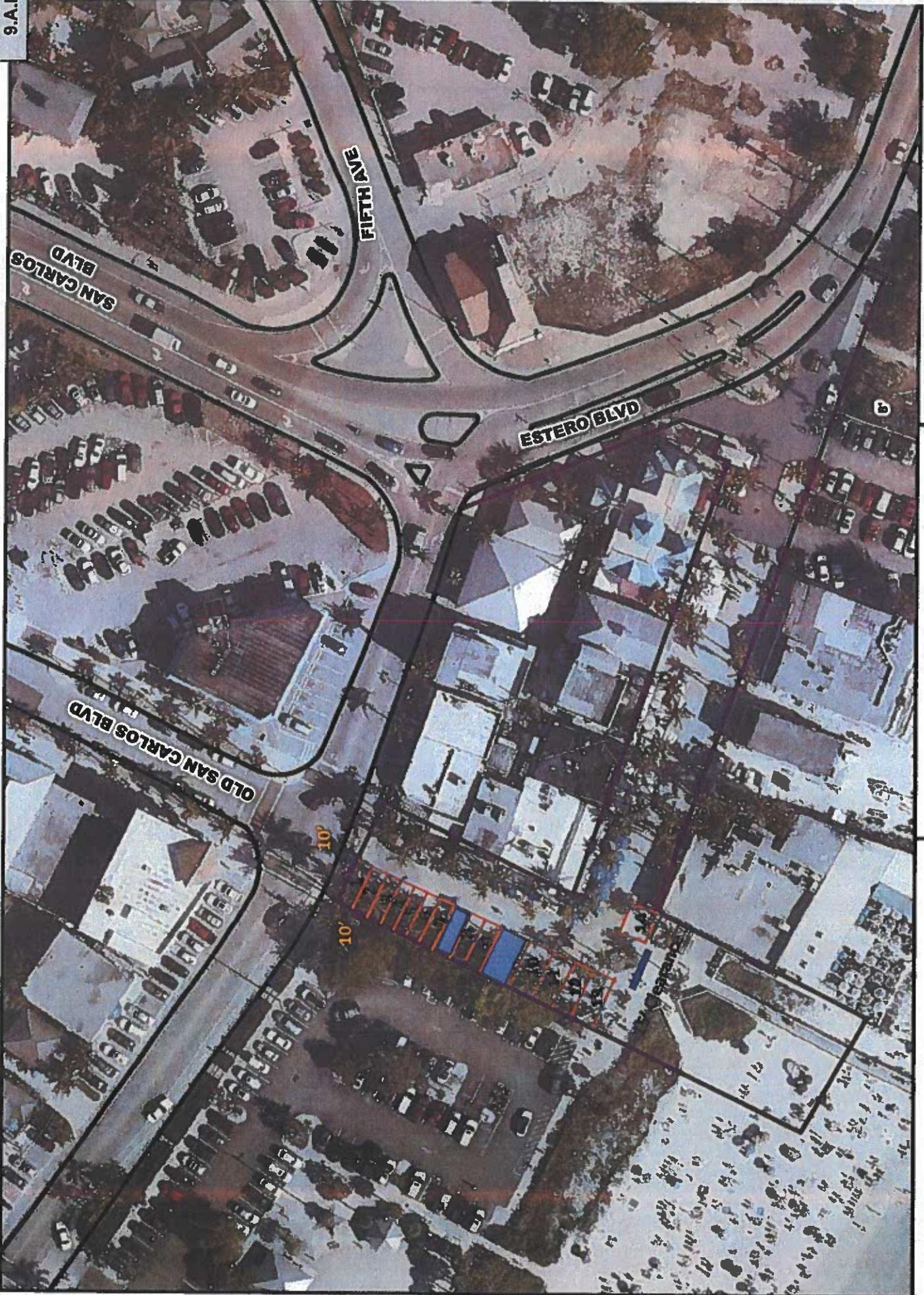
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:



John R. Herin, Jr., Town Attorney

9.A.b



 Roads
 Time Square Right-of-Way

Time Square Road Map

Date	8/11/2015	Drawn By	PW GIS	Sheet	1	Scale	1" = 75'
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Town of Fort Myers Beach, Florida
 DEPARTMENT OF PUBLIC WORKS
 2623 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
 (239) 785-0202



ESTERO BLVD



Exhibit 4 - Proposed Division of Property into Ten Areas