

ORDINANCE NO. 15-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION VII OF CHAPTER 10 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 OF LAW, SEVERABILITY; MODIFICATION; 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 had previously adopted Ordinance 12-09 regulating street performers, and now seeks to further amend its regulations to provide for additional detail and clarity to those regulations.

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

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

Section 1: LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals are hereby adopted as the legislative and administrative findings of the Town Council.

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

ARTICLE VII – STREET PERFORMERS

Sec. 10-190. Definitions.

The following words, when used in this Article, ~~shall~~ 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 impersonation, creating visual art, and other similar types of public performance done for the purpose of public entertainment or amusement.

“*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.

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 Code.

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

(a) The Town ~~shall~~ will issue a limited number of street performer permits on a first come, first served basis to persons who make proper application, meet the requirements of this Article, and pay the permit fee established under the Town Fee Schedule by the Town by resolution. 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) The information required on a permit application ~~shall~~ 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 shall will also be subject to a countrywide criminal records check.

(c) 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. Permit denials may be appealed to the Town Council ~~and shall be heard at the next available Town Council meeting.~~ 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

(d) All street performers permits shall will be issued based on the Town's fiscal year and shall will expire at midnight on September 30 of each year. ~~Street performer permits can be renewed for the next succeeding fiscal year upon payment of the applicable permit renewal fee.~~ Permit applications will be accepted September 1.

~~(e) Permits shall contain the name, photograph and permit number of the applicant and the year for which the permit is valid.~~

~~(f)~~(e) Permits may be issued, upon Town manager approval, to any minor under the age of ~~eighteen (18)~~ 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 shall 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)~~(f) Street Performer permits are non-transferable.

~~(h)~~(g) ~~Each member of a group of performers shall be required to obtain a performer's permit.~~ 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.

~~(g)~~(h) 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.

~~(h)~~(i) 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:

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;

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.

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 ~~A performer shall carry and~~ must visibly display their permit on the performer's person at all times while performing in a public area 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 those areas ~~The use of a location on public Town property by~~ as depicted on the Street Performer Performance Map, hereafter known as Exhibit A, ~~by a permit holder shall~~ Performances will only be allowed on a daily, first come, first served basis. No permit holder ~~shall~~ will make efforts to reserve a location, and each permit holder ~~shall~~ 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) ~~A permit holder cannot locate within fifty (50) feet of another permit holder,~~ provided, however, that ~~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 shall~~ will abide by all requirements of the Town's noise ordinance regulations and ~~may not utilize any artificial sound amplification devices in their performance,~~ provided, however that ~~devices that do not generate noise exceeding a median sound level of eighty decibels (72 db) measured at a distance of twenty-five (25) feet from the performer may be utilized.~~

(d) ~~Street performers shall~~ 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, ~~the~~ a Lee County Sheriff's Deputy or a ~~Town Code Enforcement Officer~~ employee may disperse the crowd that is creating the obstruction. ~~The officer~~ 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.

~~(e) Street performers shall not:~~

~~(1) Include anything in their performance that creates a fire hazard or that employs a dangerous weapon.~~

~~(2) Engage in the application of tattoos or body piercing.~~

~~(3) Include any obscene material in their performance.~~

~~(4) Harass or coerce any member of the public~~

~~(5) Block access to the entrance of any building, bicycle rack, or trash receptacle.~~

~~(6) Connect to any electrical outlets or power sources owned by the Town or any private business, or utilize any electric extension cords.~~

~~(7) Perform in a street unless such street has been closed to vehicular traffic.~~

~~(8) Construct, erect, or maintain any stage, platform, or similar structure for use during any performance.~~

~~(9) Perform in any area of the Town that is outside the DOWNTOWN zoning district.~~

~~(10) Perform within fifty feet (50') of any area that has been permitted for a Special Event pursuant to Chapter 22 of this Code, provided that such street performance shall not interfere with the permitted special event.~~

(e) Performances including a fire hazard must be reviewed by the Fort Myers Beach Fire Department prior to permit issuance.

(f) Performers will not engage in the application of permanent, semi-permanent (henna) tattoos or body piercing.

(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.

(o) Permitted Special Events 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.

(p) Performances, including preparation, may take place in any public designated performance 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.

~~(g)(g) No street performer may sell or offer for sale t-shirts, toys, compact disks, or any other goods, unless the goods relate to the performer's authorized activities under the street performer permit. goods or services.~~

~~(h)(r) Permit holders~~ Performers who are minors shall 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 ~~gratuities~~ contributions, provided such sign is no larger than 12 inches by 18 inches and does not suggest a contribution amount.

~~(d) 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.~~

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

(a) The Town Manager may suspend or revoke a permit for one or ~~more~~ 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 shall 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 shall 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 ~~shall~~ will ~~subject~~ result in the violator being subject to such penalties and remedies as provided by Code, including but not limited to, a penalty as provided in Section 1-12 of this Code being issued a Trespass Warrant from Town property.

SECTION 3: CODIFICATION AND SCRIVENER'S ERRORS

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: CONFLICTS OF LAW

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: SEVERABILITY

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 6: MODIFICATION

It is the intent of the Council that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications will be incorporated into the final version of this Ordinance.

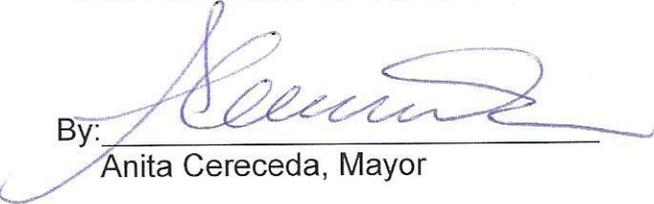
SECTION 7: EFFECTIVE DATE

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 Mayor Cereceda and seconded by Councilwoman Hosafros and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	AYE	Dan Andre, Vice Mayor	NAY
Rexann Hosafros	AYE	Alan Mandel	AYE
Summer Stockton	AYE		

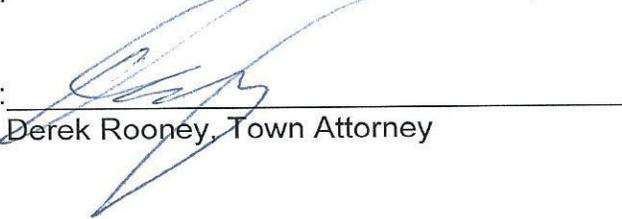
DULY PASSED AND ADOPTED THIS 21st DAY OF September, 2015, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

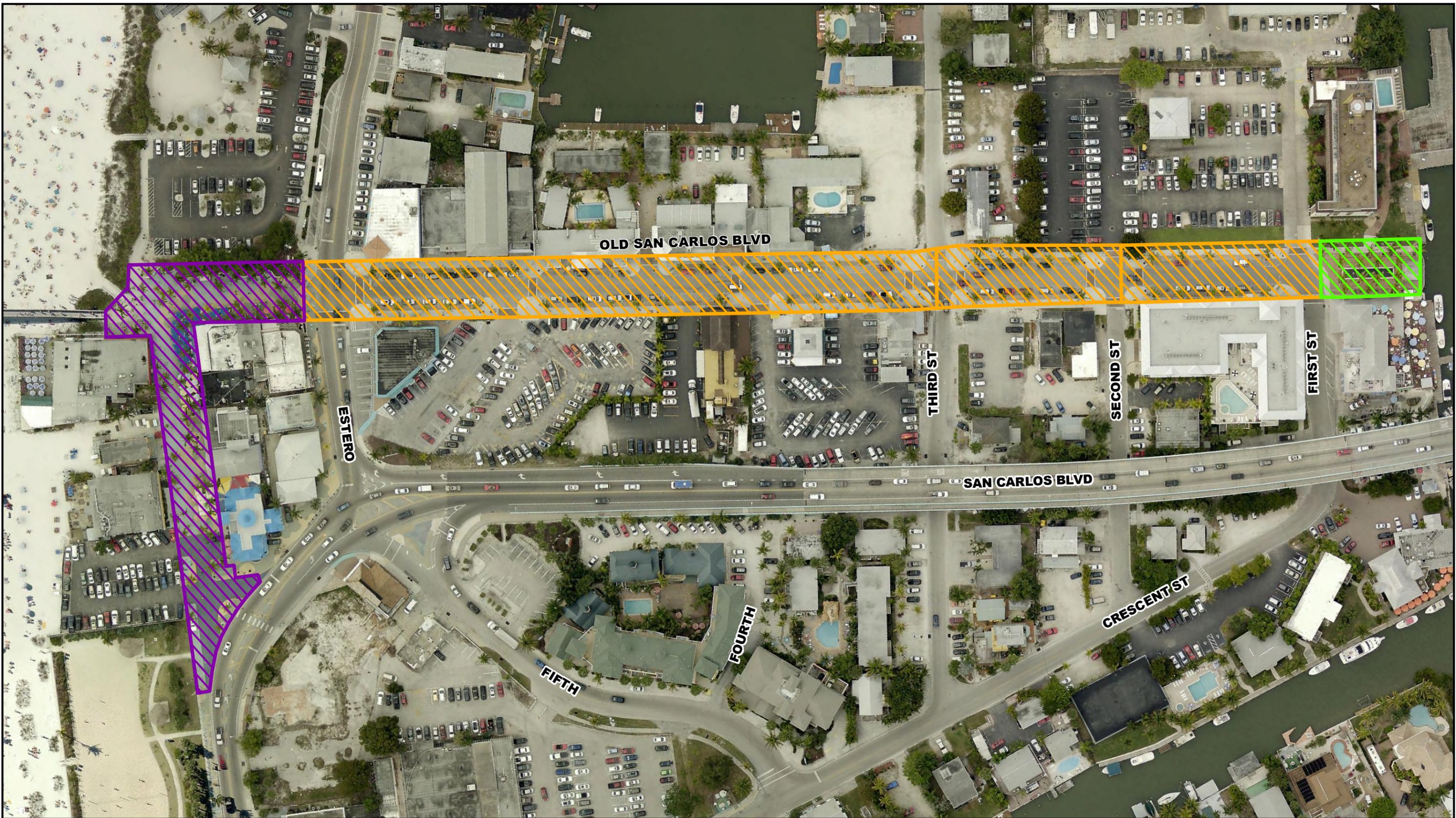
By: 
Anita Cereceda, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
Derek Rooney, Town Attorney



Town of Fort Myers Beach, Florida

DEPARTMENT OF PUBLIC WORKS
 2523 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
 (239) 765-0202

Exhibit A - Street Performer Location Map

Date: 9/29/2015	Drawn By: PW GIS	Sheet: 1	Scale: 1" = 100'
--------------------	---------------------	-------------	---------------------

-  Bayside Park Area
-  Old San Carlos ROW Area
-  Time Square ROW Area

