

1. **Requested Motion:** Motion to introduce Ordinance 12-09, Street Performers Program, and set a Public Hearing date for November 19, 2012 at 6:30 PM. **Meeting Date:** 11/05/12

Why the action is necessary: State law provides that prior to adoption of an ordinance; it must be read by title at a public meeting at least once prior to the date when it is adopted.

What the action accomplishes: Introduces the ordinance by reading the title and sets a public hearing date for the ordinance.

2. **Agenda:**

Consent
 Administrative

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**


Council
 Town Staff
 Town Attorney

5. **Background:** The Town does not currently have an ordinance to authorize the permitting and regulation of street performers. The proposed ordinance authorizes the issuance of annual permits for such performers and sets forth regulations to govern the conduct of street performers who operate in public areas of the Town.

6. **Alternative Action:** Decline to introduce the proposed ordinance and set a public hearing date.

7. **Management Recommendations:** Introduce the ordinance and set a public hearing date.

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. **Council Action:**

Approved Denied Deferred Other

ORDINANCE NO. 12-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CREATING A NEW DIVISION VII IN CHAPTER 10 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, TO BE ENTITLED "STREET PERFORMERS," CREATING SECTION 10-190, "DEFINITIONS;" SECTION 10-191, "PROHIBITION;" SECTION 10-192, "PERFORMER'S PERMIT APPLICATION; PERMIT CONDITIONS;" SECTION 10-193, "DISPLAY OF PERMIT;" SECTION 10-194, "PERMITTED PERFORMANCES; RESTRICTIONS;" SECTION 10-195, "ACCEPTANCE OF CONTRIBUTIONS;" SECTION 10-196, "PERMIT SUSPENSION/ REVOCATION; APPEAL;" SECTION 10-197, "VIOLATION—PENALTY;" PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY AND 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 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 can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and can impede the response time of safety personnel; and

WHEREAS, the Town is cognizant that street performers are 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.

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. The following shall be added as a new Article VII in Chapter 10 of the Town of Fort Myers Beach Code of Ordinances:

ARTICLE VII – STREET PERFORMERS

Sec. 10-190. Definitions.

The following words, when used in this Article, shall 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 Code.

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

(a) The Town shall issue street performer permits to persons who make proper application and pay the permit fee established by the Town by resolution.

(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. Each applicant shall also be subject to a countrywide criminal records check performed by the Lee County Sheriff’s Office.

(c) The Town reserves the right to deny a permit 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.

(d) All street performers permits shall be issued based on the Town’s fiscal year and shall 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.

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

(f) Permits may be issued to any minor under the age of eighteen (18), 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 not be permitted to perform during the hours school is in session.

(g) Street Performer permits are non-transferable.

(h) Each member of a group of performers shall be required to obtain a performer’s 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.

Sec. 10-193. Display of Permit.

A performer shall carry and display a permit on the performer's person at all times while performing in a public area.

Sec. 10-194. Permitted Performances; Restrictions.

(a) The use of a location on public property by a permit holder shall be on a daily, first come, first served basis. No permit holder shall make efforts to reserve a location, and each permit holder shall abandon a location at the end of his or her working day, including the removal of all personal property.

(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.

(c) Street performers shall abide by all requirements of the Town's noise 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 (80 db) measured at a distance of twenty-five (25) feet from the performer may be utilized.

(d) Street performers shall 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 Sheriff or a Town Code Enforcement Officer may disperse the crowd that is creating the obstruction. The officer 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 in any area that has been permitted for a Special Event pursuant to Chapter 22 of this Code.

(f) Performances may take place in any public area, 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) 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.

(h) Permit holders who are minors shall 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.

(c) The receptacle may have a sign which invites gratuities, provided such sign is no larger than 12 inches by 18 inches.

(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/Revocation; Appeal.

(a) The Town Manager may suspend or revoke a permit for one or more 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 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. Such appeal must be requested in writing and shall be heard by the Town Council at the next available Town Council meeting.

Sec. 10-197. Violation—Penalty.

Engaging in a street performance without a permit shall subject the violator to a penalty as provided in Section 1-12 of this Code.

Section 3. CODIFICATION. It is the intention of the Town Council of the TOWN OF FORT MYERS BEACH, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the TOWN OF FORT MYERS BEACH, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to Section," "Article," or other appropriate word.

Section 4. CONFLICTS. All previously adopted Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

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. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Bob Raymond, Mayor Alan Mandel, Vice Mayor
Joe Kosinski Jo List
Dan Andre

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2012, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Bob Raymond, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS, Town Attorney