

ORDINANCE NO. 16-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ORDINANCE 12-04 CODIFIED IN CHAPTER 22 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES PERTAINING TO SPECIAL EVENTS; AMENDING DEFINITIONS, PERMIT REQUIREMENTS; EXEMPTIONS FROM PERMIT REQUIREMENTS; AND FEES; REPEALING PROVISIONS RELATING TO FEE WAIVERS AND BUDGET ALLOCATIONS; AMENDING GENERAL PERMIT CRITERIA AND LIMITATIONS, PROVISIONS FOR REOCCURRING SPECIAL EVENTS, APPLICATION REQUIREMENTS, PROCEDURE FOR REVIEW, APPROVAL AND APPEAL OF DENIAL OF PERMITS; REPEALING REGULATIONS APPLICABLE TO PERMITS FOR POLITICAL DEMONSTRATIONS; AMENDING PROVISIONS RELATED TO LITTER, INDEMNIFICATION AND LIABILITY INSURANCE; AND SIGNAGE; REPEALING PROVISIONS RELATED TO NOISE; AND AMENDING PROVISIONS FOR REVOCATION OF PERMITS; REPEALING RESOLUTION 12-08 OF THE TOWN OF FORT MYERS BEACH CONTAINING A SCHEDULE OF FEES FOR SPECIAL EVENTS; PROVIDING SEVERABILITY; CONFLICTS; CODIFICATION, SCRIVENER'S ERRORS; AND, AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach has authority pursuant to Fort Myers Beach Charter Section 3.01 to enact and amend ordinances and regulations necessary to the proper functioning of the Town; and

WHEREAS, the Town Council has adopted Code of Ordinances, Town of Fort Myers, Beach, Florida (Code) Chapter 22 pertaining to Special Events Permits; and

WHEREAS, the Town Council finds it is appropriate to update and amend these provisions.

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

SECTION 1. AMENDMENT TO TOWN OF FORT MYERS BEACH CODE OF ORDINANCES CHAPTER 22.

Town of Fort Myers Beach Code of Ordinances Chapter 22 is hereby amended as follows, with strike through identifying deleted text and underlining identifying additional text.

CHAPTER 22 SPECIAL EVENTS

Sec. 22-1. Definitions.

Political Demonstration. A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

Special Event. ~~Any meeting; activity; gathering; group of persons, animals, or vehicles; or a combination thereof, having a common purpose, design or goal, in any area of the town, which event is intended to or does draw public attention, brings people together in one location that normally would not include a concentration of population, and substantially inhibits or has the potential to substantially inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building and results in preemptive use by the general public or which deviates from the established use. Such events may include entertainment, dancing, music, dramatic presentations, art exhibitions, or the sale of merchandise, food, or alcohol, or any combination thereof and which of necessity requires for its successful execution the provision and coordination of Town services to a degree over and above that which the Town routinely provides under ordinary everyday circumstances. The term shall include, but not be limited to, festivals, carnivals, concerts, parades, walks, races, garage sales, weddings, retirement parties and fundraising events, but does not include events which are solely political demonstrations, unless such political demonstration is proposed as an integral part of a larger event.~~ Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights-of-way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business.

Sec. 22-2. Permit Required.

No person or entity shall can initiate, sponsor, organize, promote, conduct or advertise a special event ~~or political demonstration~~ unless a permit has been obtained from the Town. Applicants ~~requesting special event permits may include, but are not limited to commercial, educational, civic, recreational, and religious organizations.~~

Sec. 22-3. Exemptions from Permit Requirement.

The following shall ~~not~~ do not require a special event permit:

- ~~(1) Events conducted by religious entities, provided such events are conducted entirely on property owned by the religious entity.~~
- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in ~~section~~ § 22-1, then this exemption shall will not apply.

Sec. 22-4. Fees.

All fees that relate to special events and special events permits shall will be established by ~~Town Council by resolution~~ as stated in the current Town of Fort Myers Beach Fee Schedule.

Sec. 22-5. Permit fee exemption for special events conducted by the Town.

The Town shall ~~be~~ is exempt from all permit fees relating to special events conducted by the Town.

~~Sec. 22-6. Requests for fee waivers and budget allocations.~~

~~(a) Any not for profit entity shall be eligible for a special event fee waiver. The Town Council shall each year, as part of the Annual Budget, approve an amount of money that will be utilized for such fee waivers and may, upon the request of any specific not for profit entity or group, specifically allocate an amount to be used for fee waivers for that entity or group. Requests for fee waivers may be handled on a first come, first served basis until such time as the annual budgeted amount has been exhausted. Once the annual amount has been exhausted, no further fee waivers shall be granted, provided however that Town Council, at any time during the year, may take action to increase the amount budgeted for such fee waivers.~~

~~(b) The Town Manager shall have the authority to waive a special event permit fee in instances where a not for profit entity or group provides in-kind services that benefit the Town.~~

Sec. 22-67. General criteria and limitations.

The following general criteria and limitations shall apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses, provided, however, that special event permits for events in areas zoned for single-family residential use are limited to family celebrations (i.e. weddings, retirement parties, graduation parties and the like), residents' block parties and garage sales.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the Town Council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see § 22-7) and provided further that the Town Council ~~shall have~~ has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion. ~~To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, "bike nights", "sunset celebrations", and music or art themed events. Recurring special events are subject to the following requirements:~~
 - a. ~~Each event must be held at the same location at the same time of day.~~
 - b. ~~All dates for the recurring event must be listed on the original application.~~
 - c. ~~Each individual event must be of the same genre with similar anticipated attendance.~~
 - d. ~~a recurring special event can occur no more often than weekly and for no more than one year on a single application.~~
- (3) ~~An applicant must submit an affidavit that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~
- (4) ~~All applicants must include a site plan that identifies, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with a special event activity, a general site plan. A and parking plan shall be included as part of with the special event permit~~

~~application. The location of any parking and accessory structures shall not obstruct traffic or violate any applicable Town, county or state laws.~~

- ~~(3) For any special event that will include a temporary use regulated by LDC Chapter 34 (see LDC §§ 34-3041 thru 34- 3051) a temporary use permit may also be required.~~
- ~~(54) For aAny special event that will take place all or in part upon the beach shall will be subject to all requirements contained in section LDC § 14-11 of the Land Development Code and any requirements of State or Federal agencies relating to activities that take place on the beach.~~
- ~~(5) For any special event where alcoholic beverages will be sold, the applicant must obtain a temporary one-day permit as proscribed in LDC § 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.~~
- (6) The following types of special events must be approved by the Town Council:
 - a. Special events with a duration of four days or more where alcohol will be served;
 - b. Special events with an anticipated attendance of more than 500 people;
 - c. Recurring special events (see § 22-7);
 - d. Any special event that includes a waiver of the Town's open container regulations (see Code Chapter 4, Article IV);
 - e. Special events held annually, once initially approved by Town Council, may be administratively approved by the Town Manager (ie. without formal action by Town Council) for subsequent years, so long as they do not include a Noise Ordinance waiver request (see § 22-6(6)g) or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of 10% or more, an increase of the area of the special event of 10% or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the Town Manager;

- f. Special events for which a waiver of parking or other fees is requested. If the waiver was previously approved by the Town Council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and
- g. Special events for which a waiver of the Fort Myers Beach Noise Ordinance is requested.
- b. ~~Special events requesting funding; and~~
- e. ~~Special events where the noise is anticipated to exceed what is permitted by the Town Code.~~

Sec. 22-7. Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-8. Application requirements.

(a) Any person or entity seeking issuance of a special event permit shall must file a written application with the Town Manager on forms provided by the Town.

~~An application for a special event must be filed with the town manager not less than 45 days prior to the date of the event. Applications received less than 45 days prior to the event will incur an additional permit application fee. Applications received less than ten days before the special event will not be processed.~~

(b) If any Town Council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require Town Council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the Town Manager. If the late application is accepted, the Town Manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval. No applications will be accepted less than ten (10) days before the planned event date.

(~~b~~f) A complete permit application shall must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

(45) The specific location(s) within the Town where the special event is to be held. The applicant shall also be required to must submit a general site plan describing the layout of the special event, including locations of all temporary structures that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with a the special event activity. A parking plan must be included as part of with the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable Town, county or state laws.

(~~5~~6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their

right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

- ~~(6) The expected number of persons who will attend the event.~~
- ~~(7) A description of how vehicle parking for the event will be managed.~~
- (87) Whether any street closings are requested and, if so, which streets and the times when they will be closed.
- (98) Whether any alcoholic beverages will be sold or served and ~~whether appropriate state licenses have been applied for.~~ If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in § 22-6.
- (109) If any entertainment will be included, details as to the type of entertainment, times and location shall must be provided.
- (140) Whether utility services such as electrical power or water will be required.
- (11) Whether the applicant is requesting to have a banner hung in association with the event, see § 22-15. A proof of the proposed banner is required.
- (12) ~~Proof that a written request for indicating approval of the event has been submitted to from~~ all applicable outside state and local agencies.
- (13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits established in Code § 14-23, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with § 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.
- (14) Proof of application for/approval of any temporary use permits required in conjunction with the special event, see § 34-3041-3051 of the Fort Myers Beach Land Development Code.

- (15) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event.
- (16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.
- (137) The Town Manager ~~shall have~~ has the authority to require any additional information from the applicant that the Town Manager deems necessary.

Sec. 22-9. Review of Application.

Upon receipt of an application that contains all of the items listed in § 22-8 and required application fees, the Town Manager ~~shall~~ will forward copies of the application to all affected Town departments for their review.

- (1) If the special event permit can be approved by the Town Manager administratively, the Town Manager ~~shall~~ will grant or deny an application for a special event permit within ~~15 business~~ 10 days of receipt of a complete ~~after the application is complete~~.
- (2) Special event permits requiring Town Council approval ~~action~~ shall will be scheduled for consideration at the next available regularly scheduled Town Council Regular Meeting. ~~An application shall not be deemed complete until the Town has received notification that all federal, state, and local permits or approvals have been obtained. If the permit is one that can be issued by the Town Manager and the Town Manager has received one or more letters of objection from residents who are within 500 feet of the location of the proposed event, the permit must be approved by~~
- (3) Tthe Town Council Manager and the Town Council ~~shall~~ have the right to place conditions on the a special event permit to mitigate any anticipated adverse effects on nearby residential properties.

Sec. 22-10. Grounds for Denial.

(a) The Town Manager or Town Council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

- (1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;
- (2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the Town Manager.
- (3) The application contains a material falsehood or misrepresentation.
- (4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged Town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the Town;
- (5) A fully executed prior application for a special event permit for the same time and place has been received, and a special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;
- (6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;
- (7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;
- (8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the Town concerning the sale or offering for sale of any goods or services; or
- (9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the Town.

(b) If the special event application is denied, the applicant ~~shall~~ is not be entitled to receive any reimbursement from the Town for any costs incurred during the application process, including the application fee.

Sec. 22-11. Notification of Denial and Right of Appeal.

(a) Any applicant who is denied a special event permit by the Town Manager ~~shall~~ will be notified in writing, ~~of the denial no later than five (5) days prior to the date of~~

~~the proposed event.~~ Said notification ~~shall~~ will state the reasons for the denial and the right of appeal to the Town Council, and ~~shall~~ will be sent by registered mail to the applicant.

(b) The applicant ~~shall~~ will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the Town Council. If the appeal cannot be heard by the Town Council prior to the date when the event is scheduled to be held, the filing of an appeal ~~shall~~ will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the Town Council meeting at which the appeal was heard.

(c) An appeal of the decision of the Town Council may be made to the circuit court by filing a petition for writ of certiorari as provided for under the Florida Rules of Appellate Procedure. A decision of the Town Council ~~shall~~ will be deemed to have been rendered on the date the Town Council votes to either grant or deny the appeal.

~~Sec. 22-12. Permits for Political Demonstrations.~~

~~Applications for permits to conduct political demonstrations as defined in Sec. 22-1, shall have the same requirements as applications for special event permits, provided, however, that the time period for approval or denial of such permits for political demonstrations shall be expedited and shall not exceed five (5) business days, and provided further that any appeal of a denial of such permit shall also be expedited and shall be heard by Town Council at its next regular meeting or, if such meeting is more than ten (10) business days from the date of the filing of an appeal, the Town Council shall hold a special meeting within that ten (10) business day period to hear the appeal.~~

Sec. 22-123. Litter.

(a) Special event permit holders ~~shall be~~ are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24 hour period ~~shall be~~ are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the Town Manager ~~shall have~~ has the authority to contract with a cleaning service and the cost of the cleanup ~~shall~~ will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (see §22-14).

Sec. 22-134. Security for Unpaid Expenses.

The Town Manager may require the posting of a security deposit, or other form of security acceptable to the Town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. 22-145. Indemnification and Liability Insurance.

(a) Prior to the issuance of the special event permit, the applicant ~~shall be~~ is required to execute an Indemnification and Hold Harmless Agreement in a form acceptable to the Town Attorney.

(b) Prior to the issuance of the special event permit, the applicant ~~shall maintain~~ is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the Town, that includes coverage for any Town property utilized and naming the Town as an additional insured.

Sec. 22-156. Signage.

(a) All signage relating to special events ~~shall~~ must comply with LDC Chapter 30 of the ~~Land Development Code~~.

~~(b)~~ *Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be approved by Town Manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. All Banners are permitted to may hang for a period of not less than two weeks prior to the event; provided, however, that the Town Manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high. Banners shall not contain any commercial information for the purpose of advertising anything other than the special event. All banner proofs must be approved by the town manager or his designee.*

(c) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs shall will be

determined by Public Works Director. The applicant is responsible for any fees associated with the static signs or variable message boards.

Sec. 22-17. Noise.

~~All permitted special events shall be subject to the noise regulations adopted by the Town. Such activities may also be subject to additional specific limitations on noise as set forth in the permit. Any violation of such conditions shall constitute grounds for immediate revocation of the permit by the Town Manager or designee.~~

Sec. 22-168. Revocation.

The Town Manager shall ~~have~~ has the authority to revoke a special event permit issued pursuant to this Chapter upon violation of any of the requirements contained in the permit or in this Code. ~~During the event, the Sheriff or the Fire Chief or their designee shall have the authority to order that the event cease if the continuance thereof will contribute to public disorder or endanger life or property, or if the application is found to be fraudulent in any manner.~~

SECTION 2: REPEAL OF TO TOWN OF FORT MYERS BEACH RESOLUTION 12-08.

The Town of Fort Myers Beach Special Events Schedule of Fees set forth in Resolution 12-08 is hereby repealed.

SECTION 3: SEVERABILITY.

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or for any reason whatsoever beheld invalid, then such provision will be null and void and will be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

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: CODIFICATION AND SCRIVENER'S ERRORS.

The Town Council intends that this ordinance will be made part of the Fort Myers beach Code of ordinances; and that sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article" or some other

appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing.

SECTION 6: EFFECTIVE DATE.

This ordinance becomes effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Gore and seconded by Council Member Stockton and, upon being put to a vote, the result was as follows:

Dennis Boback	Aye
Anita Cereceda	Nay
Rexann Hosafros	Nay
Tracey Gore	Aye
Summer Stockton	Aye

DULY PASSED AND ENACTED this 22 day of August, 2016.


ATTEST:

By: 
Michelle Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Dennis Boback, Mayor

Approved as to form by:


Dawn E. Perry-Lehnert,
Town Attorney

ADDITIONAL CODE SECTIONS TO REVISE

MAKE THESE IN A SUBSEQUENT ORDINANCE THESE ARE LDC SECTIONS SO THAT ORDINANCE HAS TO GO TO THE LPA

LDC Ch. 30 – Signs

LDC Sec. 30-151. – Temporary signs. / 30-151(6) Special event signs.

c. Banners – delete current text and reference 22-16(b)

LDC Ch. 34 - Zoning

Article IV. Supplemental Regulations

Division 34. Special Events

LDC Sec. 34-2441 – 2442 Delete current text and reference Code Ch. 22.

Division 37. Subordinate and Temporary Uses

Subdivision II. Temporary Uses

LDC Sec. 34-3041(d)(2) revise to permit temporary use permits 4 times per year.

LDC Sec. 34-3042 Carnivals, fairs, circuses, and amusement devices. Section (d) revise to reference Code Ch. 22.

Add Farmer's Markets to Temporary Uses (?)

Subdivision III. Special events.

LDC Sec. 34-055 Special Events – Delete in entirety, redundant of LDC Secs. 34-2441-2442.