

ORDINANCE 2021-01

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FERNANDINA BEACH, FLORIDA BY AMENDING CHAPTER 70, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, ARTICLE IV, STREET PERFORMERS, BY AMENDING SECTION 172 TO ALLOW FOR PERMITS TO BE GRANTED ON A ROLLING BASIS REMOVING THE REQUIREMENT FOR IN-PERSON APPLICATION; AND SECTIONS 170, 171, 172, 173, 174, 175, 176, 177, 178 TO EDIT FOR CLARITY WITHOUT CHANGING THEIR MEANING; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in the interest of the health, safety, and welfare of pedestrian traffic within City rights-of-way, the City Commission of the City of Fernandina Beach, Florida, regulates certain activities such as street performances; and

WHEREAS, from time to time, these regulations are reviewed to ensure they are meeting the needs of the City and its citizens; and

WHEREAS, in order to better serve the citizens of Fernandina Beach, it was determined that the current system of all permit applications having a certain deadline and requiring an in-person application was inefficient and could be for applicants; and

WHEREAS, the City has been making an effort to ensure that the Code of Ordinances is written in plain language.

NOW, THEREFORE, THE CITY OF FERNANDINA BEACH, FLORIDA, HEREBY ENACTS:

SECTION 1. It is hereby proposed that Chapter 70, Section 170 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-170. Legislative findings and intent.

The City Commission of the City of Fernandina Beach hereby ratifies, approves, and adopts all of the foregoing predicate "Whereas" clauses. The City Commission of the City of Fernandina Beach finds that the existence in the City of street performers, street artists and art vendors, as hereinafter defined, without permits, as hereinafter defined, would interfere with the public health, safety, and welfare of the pedestrian traffic, including residents and tourists by, among other things, attracting audiences which congest the public rights-of-way including but not limited to City sidewalks. The City finds that without the requirement of a permit and regulations, the existence of street performers, art vendors and street artists in the City further would adversely affect the City's interests in the aesthetics incident to the historic character of the central business district and historic district overlays and the beauty and serenity of the public beaches, and would adversely affect the interest of residents and the regulated, code compliant businesses in the enjoyment of peace and quiet in their homes and businesses. Also, the City finds that the existence of street performers, street artists and art vendors would pose a safety risk to the public and passers-by by congestion and clutter in some areas of Fernandina Beach such as the central business district. Therefore, it is the intent of the City to prohibit street performers from performing in the City without a permit, and the

street artists and art vendors from vending in the City without a permit, and to have access to reasonable alternative avenues of communication on all public beaches and in most public parks of the City, including but not limited to the "pocket parks" in the central business district.

SECTION 2. It is proposed that Chapter 70, Section 171 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-171. Definitions.

[The following words, terms, and phrases, when used in this article, ~~shall~~ have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Art ~~shall~~ means painting, sketching, photography and sculpture. Other mediums of artistic expression ~~shall~~ may also be permitted upon the City Manager's or designee's studied determination that such other mediums are established and recognized in the artistic community, including by professional institutions such as museums and art galleries.

Art vendor (or *street artists*) ~~shall~~ means the following activities (or one who engages in it): The creation, display and/or sale of art that is created on public property only by the permit holder. An art vendor or street artist ~~shall~~ does not include a person who creates a work of art while in a public area, but has no intention to display for sale or sell the work of art in that area.

Historic district ~~shall~~ means all property located within any historic district overlay and/or the central business district as defined by the Land Development Code.

Street performance (or *street performer*) ~~shall~~ means the following activities (or one who engages in them): Acting, singing, playing a musical instrument with or without amplification, pantomime, juggling, magic, dancing, comedy, acrobatics, puppetry, and other similar types of public performance. A street performer may be an individual or an ensemble.

SECTION 3. It is proposed that Chapter 70, Section 172 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-172. - Permit required; application; appeal.

- (a) A permit system for street performers and street artists is hereby established. It ~~shall be~~ is unlawful for any person to engage in any street performance or art vending on public property in the City without first obtaining a permit as required by this article. This article ~~shall~~ does not apply to impromptu behavior by persons not holding themselves out as public performers.
- (b) The City ~~shall~~ issues street performer permits (permit "A"); and art vending or street artist permits (permit "B") for use in the City. Each permit "A" and "B" ~~shall be~~ are effective for a period of one year from the date the permit is issued.
- (c) The City ~~shall~~ will establish a standard application form for "A" and "B" permits. This application form ~~shall~~ will include (but not be limited to): (i) name, address and telephone number of the applicant; (ii) a photograph of the applicant or each member of the ensemble; (iii) a declaration under penalty of perjury that the applicant for a "B" permit ~~shall~~ will vend art that is only of his or her own original creation; (iv) a hold harmless and indemnification agreement releasing the City and its employees from all claims and actions arising out of the street performance or art vending on public property; and (v) a description of the performance or the art. ~~All applications to the City must be made in person by the applicant.~~

(d) A permit is nontransferable.

~~(e) A person who misses the application deadline set forth in subsection (b) shall appeal to the city manager, in writing, so long as the following criteria are met: (i) the person was approved for a permit for the same proposed activity in the previous year; and (ii) the ground for appeal is a demonstrable hardship directly related to the missed application deadline. The appellant shall file the appeal with the city clerk.~~

(f) (e) A person whose permit application is denied ~~for a reason other than that set forth in subsection (e)~~ shall may appeal to the City Manager for review of the denial. The appellant ~~shall~~ must file the appeal in writing to the City Clerk within ten days from the date of the denial. The City Manager ~~shall~~ will provide notice and an opportunity to be heard.

SECTION 4. It is proposed that Chapter 70, Section 173 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-173. - Providing for locations on public property.

- (a) A street performer, art vendor or street artist with a valid permit may perform or vend art in City parks during the hours the parks are open to the public, including but not limited to Jean Ribault Park, Hook Pocket Park, Central Park, Main Beach Park and Seaside Park; however, the Amelia Island Lighthouse, Bosque Bello Cemetery, and City streets and sidewalks ~~shall may~~ not be used by street performers or street artists permitted under this Article.
- (b) The use of a location in a City park by a permit holder is on a daily, first-come, first-served basis. No permit holder ~~shall make efforts to~~ may exclusively reserve a location; and each permit holder ~~shall~~ must abandon a location at the end of his or her working day, including the removal of all personal property of the permit holder. Special events held pursuant to a City-issued permit ~~shall~~ have first priority for any public property, space or location that a permit holder under this article could otherwise occupy. Street performers, street artists and art vendors ~~shall are~~ not be permitted to perform or vend art within a specified City-permitted special event area, without written permission from the special event sponsor.

SECTION 5. It is proposed that Chapter 70, Section 174 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-174. - Permit regulations.

- (a) Throughout the period of time the permit holder is located on public property and engaged in performance or vending art, he or she ~~shall~~ must maintain the permitted area, within a radius of ten feet, free of trash and debris and deposit the trash and debris in proper receptacles.
- (b) A street performer or art vendor or street artist ~~shall may~~ not create noise that violates the Fernandina Beach Noise Control Ordinance set forth in chapter 42 of the Code of Ordinances.
- (c) A street performer or art vendor or street artist ~~shall may~~ not create an undue interference with the passage of the public through a public area. If a street performer or art vendor or street artist attracts a crowd sufficient to obstruct the public way, a police or code enforcement officer ~~shall~~ will disperse the crowd that is creating the obstruction. The officer ~~shall will~~ ask the street performer or art vendor or street artist temporarily to suspend a performance or vending activity or to leave the location when such action is necessary to protect the public safety or public order.

- (d) A street performer or art vendor or street artist may request donations of money or property at a performance. Art vendors or street artist ~~shall~~ may offer for sale their own original art (or a reproduction thereof so long as it is identified as a reproduction), provided that the display of the art is contained in an area within the immediate reach of the art vendor or street artist.
- (e) No street performer or art vendor or street artist ~~shall~~ may create a fire hazard or use fire in a performance.
- (f) No street performer or art vendor or street artist ~~shall~~ may engage in the application of tattoos or body piercing.
- (g) No street performer or art vendor or street artist ~~shall~~ may include obscenity in a performance or vending activity.
- (h) No street performer or art vendor or street artist ~~shall~~ may engage in harassment or coercion of passersby.
- (i) Spray painting ~~shall be~~ is permitted, so long as the artist provides ground cover, a wind screen, and confines the spray painting to an area not greater than five feet by five feet; and otherwise ensures that the spray paint ~~shall will~~ not damage or implicate property not involved in the subject art.
- (j) No food or drink, whether made by a permit holder or otherwise, ~~shall be~~ is permitted to be displayed or offered for sale.
- (k) No display tables, lounge chairs, push carts or mobile display racks (other than one easel) ~~shall~~ may be placed on public property. One small chair or stool shall be allowed; a portrait artist shall provide a folding chair for the customer which shall be stored when not in use.
- (l) No street performer or art vendor or street artist ~~shall~~ may block access to an entrance to any building.
- (m) No street performer or art vendor or street artist ~~shall~~ may interfere with a motorist, either regarding the passage of a vehicle or the sight of its driver.
- (n) A permit holder ~~shall~~ may not engage in fraudulent practices or solicitations, including but not limited to misrepresentation about any sale or solicitation, misrepresentation about the nature and type of any organization with which the permit holder is associated, misrepresentation or concealment of any material fact in the application process, or misrepresentation regarding any art being vended.
- (o) No street performer or art vendor or street artist ~~shall~~ may connect to electric outlets or power sources owned or utilized by the City, and must provide his or her own safe power sources, if any are required.
- (q) No street performer ~~shall~~ may use an animal as part of his or her act while on public property unless the performer is licensed by the United States Department of Agriculture under the Animal Welfare Act and provides the City with proof thereof.
- (r) Persons operating under Permit "B" ~~shall~~ may not engage in performances of any kind, except for the creation of an original work of art.
- (s) No street performer or art vendor or street artist is allowed to engage in permitted activity (with a valid permit) under this article after 10:00 p.m. Sunday through Thursday or after 11:00 p.m. on Friday and Saturday.
- (t) The City may promulgate administrative rules to effectuate this section.

SECTION 6. It is proposed that Chapter 70, Section 175 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-175. - Display of permits.

- (a) Permits "A" and "B," as applicable, ~~shall~~ must be displayed ~~so as to be clearly visible~~ at the performance or art vending location at all times. The permit must contain a photograph of the permit holder. ~~The permit shall be displayed so as to be clearly visible at the performance or art vending location.~~
- (b) Holders of permit "B" who are vending art ~~shall~~ must display the sales price for each work of art created in the public area for sale. The sales price either ~~shall~~ must be affixed to the work of art or be on a temporary sign ~~whose~~ with dimensions ~~shall~~ not to exceed 8½ by 11 inches.

SECTION 7. It is proposed that Chapter 70, Section 176 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-176. - Suspension and revocation of permits.

- (a) If, in the opinion of the City Manager, a special event or major festival approved by the City Commission will cause extraordinary sidewalk congestion, then the City Manager ~~shall~~ may suspend permits issued under this article during the period of the festival. The City Manager may contract with a sponsor of a special event to allow additional street performers and art vendors or street artists in the public right-of-way during the special event.
- (b) A permit obtained through fraud or through material misrepresentation on the permit holder's application is deemed void ab initio ~~and may be revoked. The city manager shall revoke the permit.~~ Prior to revocation, the City Manager or ~~his/her~~ designee ~~shall~~ will provide the permit holder written notice and an informal opportunity to be heard on the decision to revoke.
- (c) If a permit holder is found ~~by the special magistrate~~ to have violated the regulations set forth in this article twice within a one-year period, then the City Manager ~~shall~~ may revoke the permit. Prior to revocation, the City Manager or ~~his/her~~ designee ~~shall~~ will provide the permit holder written notice and an informal opportunity to be heard on the decision to revoke.
- (d) Any revocation of a permit under subsections (a) or (b) ~~shall~~ will be for the duration of the current permitting period and for the next subsequent permitting period.
- (e) The decision of the city manager or his/her designee to revoke a permit under subsection (b) or (c) ~~shall~~ will be provided in writing to the permit holder. The revocation decision ~~shall~~ constitutes final administrative agency action.

SECTION 8. It is proposed that Chapter 70, Section 177 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-177. - Permit fee.

The annual permit fee for a street performer or street artist permit ~~shall be~~ is \$300.00 per person or ensemble, per year. It shall be payable at the time of permit issuance. The permit ~~shall~~ must be renewed every year and a new permit fee paid by the street performer or street artist. The City Commission reserves the right to increase the permit fee from time to time and include such permit fee in the city's fee ordinance.

SECTION 9. It is proposed that Chapter 70, Section 178 of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby amended to read as follows:

Sec. 70-178. - Penalties.

- (a) A person charged with violating this article ~~shall be~~ is subject to prosecution and fines under Section 1-12 of the Fernandina Beach Code of Ordinances. An alleged violator may appeal a citation to the special magistrate in accordance with section 2-399 of this Code.
- (b) A street performer or street artist who is located in whole or in part on private property without the consent of the private property owner is subject to prosecution for trespass under Florida State Law.

SECTION 10. If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof is held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application must not be affected thereby.

SECTION 11. The provisions of this Ordinance will take effect immediately upon its passage and enactment.

ENACTED this 2nd day of February, 2021.

CITY OF FERNANDINA BEACH

MICHAEL A. LEDNOVICH
Commissioner – Mayor

ATTEST:

APPROVED AS TO FORM & LEGALITY:



CAROLINE BEST
City Clerk

TAMMI E. BACH
City Attorney