

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES ENTITLED "AMUSEMENTS AND ENTERTAINMENT"; BY AMENDING SECTION 6-1, TO ADD DEFINITIONS; SECTION 6-2 TO AMEND PERMIT, APPLICATION AND APPEAL PROCESSES, ADDING PALM WEAVING PERMITS AND EXTENDING 2010 PERMITS; AMENDING SECTION 6-3, REGARDING LOCATIONS; AMENDING SECTION 6-4 BY AMENDING PERMIT REGULATIONS AND PROHIBITIONS; AMENDING SECTION 6-7 REGARDING REVOCATION OF PERMITS; AMENDING SECTION 6-8, ADJUSTING PERMIT FEES; AMENDING SECTION 6-9 REGARDING PENALTY ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Key West finds that the existence of street performers and art vendors inherently attract audiences which congest the public area thereby creating a hazard to public health, safety and welfare of pedestrian passersby, it is the intent of the City Commission for the City of Key West to update the Street Performers and Street Artists Ordinance; and

WHEREAS, the City of Key West finds that the existence of street performers in unregulated locations within the most historic area of the city and one of the most historically significant historic districts in the United States would adversely affect the interests of the residents and the code compliant businesses in the enjoyment of their homes and businesses, the City

Commission for the City of Key West hereby establishes acceptable areas for Street Performers and Street Artists to safely perform their craft in the historic district; and

WHEREAS, the City Commission for the City of Key West has taken testimony regarding the extreme pedestrian congestion on the sidewalks of the historic district, along with testimony regarding modern minimum sidewalk clearances in light of the American With Disabilities Act's design guidelines for public rights-of-way and the task of reconciling the two, the amendments contained herein are justifiable time, place and manner regulations of free speech under the First Amendment; and

WHEREAS, the amended ordinance contained herein has been considered by the Duval Street Committee and vetted in numerous meetings with the street performers and artists; and

WHEREAS, an amendment to the Street Performers and Street Artists ordinance will promote the health, safety and welfare of the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 6-1 of the Code of Ordinances is hereby amended as follows*:

Sec. 6-1. Definitions

Art shall mean painting, sketching, photography, palm weaving, crafts and sculpture reviewed and approved by the Art in Public Places Board. Other mediums of artistic expression may also be permitted upon ~~the city manager's designee's~~ Art in Public Places' studied determination and approval that such other mediums are established and recognized in the artistic community, including by professional institutions such as museums and art galleries.

*(Coding: Added language at first reading is underlined; deleted language is ~~struck through~~.)

Added language at second reading is double underlined; deleted language is ~~double struck through~~.)

Animal shall mean any living or non living warm or cold-blooded creature including but not limited to: reptiles, amphibians, arachnids, birds, or mammals.

Artisan and Performer Corridor shall mean those portions of public sidewalk on Duval Street from Front Street to Petronia Street including all intersecting

streets up to but not including Whitehead Street and
Simonton Street as described in attached "Exhibit A."

Duval Street Corridor Cultural District shall mean
those portions of public sidewalk on Duval Street from
Petronia Street to South Street including all intersecting
streets up to but not including Whitehead Street and
Simonton Street as described in "Exhibit C"

Historic District shall mean all property located within the following zoning districts of Key West: HRO, HRCC-1, HRCC-2, HRCC-3, HRCC-4, HMDR, HHDR, HNC-1, HNC-2, HNC-3, HCT, HCL, HPS, HPS-1 and HPRD.

Street performance (or street performer) shall mean the following activities (or one who engages in them): acting, singing, playing a musical instrument, pantomime, juggling, magic, dancing, comedy, acrobatics, puppetry, joke telling, character impersonation and other similar types of public performance done for the purpose of public entertainment or amusement.

Vending of art (or art vendor) shall mean the following activities (or one who engages in it): the creation, display and/or sale of art that is created only by the permit holder. An art vendor shall 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 at any point in time.

Weapons shall mean any dirk, knife with a blade longer than 2 inches, scissors or shears with a blade longer than 4 inches, metallic knuckles, slingshot, bille, tear gas gun, chemical weapon or device, machete, axe, plastic gun or blunt-bladed table knife or other deadly weapon, that is not otherwise regulated and approved by the Cultural Preservation Society for performances only at Mallory Square sunset celebration.

Section 2: That Section 6-2 of the Code of Ordinances is hereby amended as follows:

Sec. 6-2. Permit Required; Application; Appeal

(a) A permit system for street performers and street artists is hereby established. It shall be unlawful for any person to engage in any street performance or art vending on public property in the Historic District within the area defined in 6-1 as the Artisan and Performer Corridor without first obtaining a permit as required by this article. This ordinance shall not apply to impromptu behavior by persons not holding themselves out as public performers.

(b) The city through its licensing division shall issue street performer permits (Permit "A") and art vending permits (Permit "B") for use in the ~~Historic District~~ area defined in 6-1 as the Artisan and Performer Corridor. Each Permit "A" and "B" shall be effective for a period of one year. The licensing division shall open an application process during the month of November of each year, closing applications on each November 30, and shall issue such permits on or before each ~~December~~ January 15. ~~The first year's enrollment shall close on February 1, 2005, and the initial issuance of permits, with fees pro-rated, shall occur on February 15, 2005 (to expire on December 14, 2005).~~ Those permits which have not been paid for in full and picked up at the licensing department on or before January 15 shall be forfeited.

(c) The licensing division shall establish a standard application form for "A" and "B" permits. This application form shall include (but not be limited to): (i) name, address and telephone number of the applicant; (ii) a photograph of the applicant; (iii) a declaration under penalty of perjury that the applicant for a "B" permit shall vend art that is only of his or her own original creation; (iv) a hold harmless 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 licensing division must be made in person by the applicant; (vi) A Certificate of Appropriateness issued by the Art in Public Places Board for all permit B applications; (vii) Permittee shall furnish and maintain ~~such~~ public liability and property damage insurance providing coverage for all claims and damage to property or bodily injury, including death which may arise from street performances or art vending on city right of way under this ordinance. Such insurance shall provide coverage of not less than Three Hundred Thousand Dollars (\$300,000.00) for bodily injury and property damage respectively, per occurrence. The City shall be named as an additional insured. All policies required under this ordinance shall provide such policies may not be terminated or cancelled without 30 days written notice sent via certified mail to the licensing official for the City of Key West.

(d) A permit is nontransferable.

(e) A person who misses the application deadline set forth in subsection (b) may appeal to the city commission 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 in writing to the city clerk and pay the standard filing fee. The appeal shall be scheduled for the next available city commission meeting.

(f) Any art vendor permit application that is denied by the Art in Public Places Board under this section may appeal said denial to the city commission after providing written notice to the city clerk and paying the standard filing fee.

~~(f)~~ (g) A person whose permit application is denied for any reason other than that set forth in subsections (e) and (f) may appeal to the city manager for review of the denial. The appellant shall file the appeal in writing to the city clerk on or before ten days from the date of the denial. The city manager shall provide notice and opportunity to be heard. ~~The ten-day appeal period shall not apply to applications denied in December of 2005.~~

(h) There shall be a limitation of permits issued for palm weaving of five permits per year to be determined by lottery system established by the licensing department. All

other requirements under chapter 110 for palm weavers must be complied with.

(i) Permits that are outstanding and valid in 2010 upon the passage of this ordinance shall be granted an extension of their existing permit period to January 14, 2011.

Section 3: That Section 6-3 of the Code of Ordinances is hereby amended as follows:

Sec. 6-3. Locations.

(a) The following locations in the Historic District shall not be used by street performers or street artists permitted under this ordinance:

i. Mallory Square.

ii. Wall Street.

iii. In front of or abutting a federal, state or local government building.

iv. In front of or abutting a church, synagogue or other place of worship.

v. In front of or abutting a theatre.

vi. The Key West Bight Harborwalk.

vii. The Truman Waterfront property.

viii. The area ~~under license agreement at~~ commonly known as the Southernmost Point. Extending three

hundred feet from the center of the intersection of South Street and Whitehead Street.

ix. The area defined in 6-1 as the Duval Street Corridor Cultural District

(b) The use of a location on public property by a permit holder is 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 of the permit holder.

(c) ~~The following area outside of the Historic District, White Street Pier shall not be used by street performers or street artists: the White Street Pier.~~

(d) A license holder cannot establish themselves within ~~thirty~~ twenty feet of the closest intersection or within ~~twenty~~ ten feet of another permit holder. Street performers may combine performances subject to the limitation as set forth in 6-4(k).

(e) A permit holder within this Article shall establish themselves in an area that is at least five feet from the adjacent property line and at least twelve inches from the adjacent street curb as described in attached "Exhibit B."

Section 4: That Section 6-4 of the Code of Ordinances is hereby amended as follows:

Sec. 6-4. Permit regulations; prohibitions.

(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 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 performer or art vendor shall not create noise that violates the Key West sound control ordinance set forth in chapter 26 of the Code of Ordinances.

(c) A performer or art vendor shall not create an undue interference with the passage of the public through a public area. If a performer or vendor attracts a crowd sufficient to obstruct the public way, a police or code enforcement officer may disperse the crowd that is creating the obstruction. The officer may ask the performer or vendor 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 performer ~~or vendor~~ may request donations of money or property at a performance. Art vendors holding a Permit B shall present a valid State of Florida sales tax receipt at the time of application Art vendors 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.

(e) No performer or art vendor shall create a fire hazard or use fire or a weapon as defined in 6-1 in a performance or creation of art or crafts.

(f) No performer or art vendor shall engage in the application of tattoos or body piercing.

(g) No performer or art vendor shall include obscenity in a performance or vending activity.

(h) No performer or art vendor shall engage in harassment or coercion of passersby.

(i) Spray painting shall be 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 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 permitted to be displayed or offered for sale.

(k) No ~~display~~ tables, lounge chairs, push carts or mobile display racks ,including all accoutrements, shall be

placed on public property—(other than one easel) display that is no larger than six feet high, three feet wide and three feet deep including all attachments for either permit A or permit B holders. ~~shall be placed on public property.~~ One small chair or stool shall be allowed; a portrait artist may provide a folding chair for the customer which shall be stored when not in use. Permit holders shall not occupy an area larger than twenty-five square feet.

(l) No performer or art vendor shall block access to an entrance to a building, bicycle rack, or to a trash receptacle.

(m) No performer or art vendor shall interfere with a motorist, either regarding the passage of a vehicle or the sight of its driver.

(n) A permit holder shall 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 performer or art vendor shall engage in off-premises canvassing as set forth in chapter 18 of the Code

of Ordinances; provided, however that an art vendor may distribute a catalogue of his or her work.

(p) No performer or art vendor shall connect to electric outlets or power sources owned by the city or on private property, and must provide his or her own safe power sources, if any are required. Extension cords that traverse the city right of way are prohibited.

(q) No performer shall 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. Such act is limited to one animal per permit holder.

(r) Persons operating under Permit "B" shall not engage in performances of any kind, except for the creation of an original work of art.

(s) The licensing division may promulgate administrative rules to effectuate this section.

(t) No permit holder may actually or constructively possess any alcoholic beverages, nor be under the influence of same while conducting their business or performance.

(u) Palm fronds used by a permit holder shall be limited in length to three feet.

Section 5: That Section 6-7 of the Code of Ordinances is hereby amended as follows:

Sec. 6-7. - Revocation of permit.

(a) A permit obtained through fraud or through material misrepresentation on the permit holder's application is deemed void *ab initio*. The city manager shall revoke the permit. Prior to revocation, the city manager or his designee shall provide the permit holder notice and an informal opportunity to be heard on the decision to revoke.

(b) If a permit holder is found by the code enforcement special master or the county court to have violated the regulations set forth in this article two times within a ~~one~~- three year period, then the city manager may revoke the permit. Permits whose insurance is cancelled prior to the expiration of the insurance policy will be subject to revocation. Prior to revocation, the city manager or his designee shall provide the permit holder notice and an informal opportunity to be heard on the decision to revoke.

(c) Any revocation of a permit under subsections (a) or (b) shall be for the duration of the current permitting period and for the next subsequent permitting period.

(d) The decision of the city manager or his designee to revoke a permit under subsection (a) or (b) shall be provided in writing to the permit holder. The revocation decision shall constitute final administrative agency action.

Section 6: That Section 6-8 of the Code of Ordinances is hereby amended as follows:

Sec. 6-8. Fee.

The permit fee for a street performer or street artist permit shall be ~~\$100.00~~ \$200.00. It shall be payable at the time of permit issuance.

Section 7: That Section 6-9 of the Code of Ordinances is hereby amended as follows:

Sec. 6-9. Penalty.

(a) A person charged with violating section 6-1 through and including 6-8 hereof shall be subject to prosecution and fine under the civil citation procedures of sections 2-676 through 2-680, or section 1-15 of the Key West Code of Ordinances or brought before the special magistrate under Ch. 162 of Florida Statutes.

(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, Florida Statutes Chapter 810.

Section 8: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 9: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 10: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2010.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2010.

Authenticated by the presiding officer and Clerk of
the Commission on _____ day of _____, 2010.

Filed with the Clerk _____, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK