

## ORDINANCE 2015-01

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 14.5 “PEDDLERS AND SOLICITORS” BY CREATING ARTICLE III “STREET PERFORMING” TO PROVIDE FOR PERMITTING AND REGULATION OF STREET PERFORMANCES; AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE**

1           **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of  
2 Ordinances (the “Code”) are periodically necessary in order to ensure that the Town’s  
3 regulations are current and consistent with the Town’s planning and regulatory needs; and

4           **WHEREAS**, the Town Commission recognizes that street performers can, when  
5 carefully regulated, provide a public amenity that enhances the character of a downtown  
6 pedestrian environment; and

7           **WHEREAS**, the Town Commission desires to permit performances in a manner  
8 consistent with the overall public interest; and

9           **WHEREAS**, the Town Commission recognizes that street performers seek to and do  
10 draw crowds to their performances which can create serious safety problems by impacting the  
11 ability of pedestrians to move safely on sidewalks and through crosswalks, and impeding the  
12 response time of safety personnel; and

13           **WHEREAS**, street performances can also impact access to and egress from businesses;  
14 and

15           **WHEREAS**, the Town Commission finds that street performers often interact closely  
16 with the public including children; and

17           **WHEREAS**, the Town Commission finds that the permitted presence of a street  
18 performer in the Town is perceived by the public as non-threatening; the Town’s allowance of  
19 the activity thus creating in the public a sense of security and trust; and

20           **WHEREAS**, the protection of the public, particularly children, from felons and sex  
21 offenders, is a critical concern; and

22           **WHEREAS**, the Town Commission recognizes that street performers are engaged in  
23 First Amendment activities; and

24           **WHEREAS**, the Town Commission desires to impose reasonable time, place and  
25 manner restrictions on street performers to the extent necessary to ensure the safety of  
26 performers, their audience, and the general public and to prevent unreasonable interference with  
27 residents’ enjoyment of peace and quiet in their homes or the ability of businesses to operate and  
28 conduct their business; and

29           **WHEREAS**, the Town Commission conducted a first and second reading of this Ordinance  
30 at duly noticed public hearings, as required by law, and after having received input from and  
31 participation by interested members of the public and staff, the Town Commission has determined  
32 that this Ordinance is consistent with the Town’s Comprehensive Plan and in the best interest of the  
33 Town, its residents, and its visitors.

34 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**  
35 **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

36           **SECTION 1. Recitals.** The preceding “Whereas” clauses are ratified and incorporated  
37 as the legislative intent of this Ordinance.

38           **SECTION 2. Amendment.** Chapter 14.5, “Peddlers and Solicitors,” of the Code of  
39 Ordinances, is hereby amended by creating Article III, “Street Performing,” as follows<sup>1</sup>:

40   **CHAPTER 14.5 - PEDDLERS AND SOLICITORS**

41

42   \* \* \*

43   **ARTICLE III. STREET PERFORMING**

44   **DIVISION 1. GENERALLY**

45   **Sec. 14.5-61. Intent and Purpose.**

46           The Town Commission finds that allowing street performers in the Town provides a public amenity  
47 that enhances the character of the downtown, and seeks to encourage performances in a manner  
48 consistent with the overall public interest. The Town Commission also recognizes that street  
49 performers seek to and do draw crowds to their performances. This can create serious safety  
50 problems by impacting the ability of pedestrians to move safely on sidewalks and through  
51 crosswalks, and impeding the response time of safety personnel. It can also impact access to and  
52 egress from businesses.

53           Cognizant that street performers are engaged in First Amendment activities, this Article imposes  
54 reasonable time, place and manner restrictions on street performers to the extent necessary to  
55 ensure the safety of performers, their audience, and the general public and to prevent unreasonable  
56 interference with residents’ enjoyment of peace and quiet in their homes or the ability of businesses  
57 to operate and conduct their business.

58           The purpose of this Article is to encourage and permit street performance in public areas.

59   **Sec. 14.5-62. Definitions.**

60           For the purpose of this Article, the following words and phrases shall have the meanings hereinafter  
61 set forth except where such terms are used in a context which clearly indicates a different meaning.

62           *Perform* means to do an action or activity for the purpose of entertaining, which may include, but is  
63 not limited to, the following: acting, singing, playing musical instruments, pantomime, juggling, magic,  
64 dancing and reciting. “Perform” shall not include the production of items for sale.

65           *Performance Site* means the area, 20 feet in radius surrounding the Performer when he or she is  
66 performing.

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<sup>1</sup> All text is new text. Additions to the proposed text between first and second reading are shown in underline.  
Deletions to the proposed text between first and second reading are shown in ~~striketrough~~.

67 *Performance Permit* means a performance permit issued by the Town to an individual or group of  
68 people to allow that individual or group to Perform within the Town as specified in the Permit  
69 pursuant to this Article.

70 *Performer* means a person or group of persons who has obtained a permit pursuant to this Article.

71 *Public Areas* means the sidewalks, parks, playgrounds and all other public ways located in the  
72 Town, except those portions of the streets and roadways intended for use by vehicular traffic within  
73 the Town.

74 *Town* means Town of Lauderdale-By-The-Sea

75 *Town Manager* means the Town Manager of the Town or his or her designee.

76 **Sec. 14.5-63. Prohibitions.**

77 (a) No person may perform in the public area without having obtained a performance permit issued  
78 under Section 14.5-64.

79 (b) A performer may not use any power source that poses a fire or public safety hazard or any  
80 generator. A performer may not connect or maintain an electrical cord to an adjacent building or to a  
81 Town power source.

82 (c) A performer may not use electric or electronic amplification.

83 (d) A performer may not litter his or her performance area, and is responsible for maintaining his or her  
84 performance area, free of litter.

85 (e) A performer may not utilize during his or her performance, or prevent the public from utilizing, any  
86 public bench or waste receptacle. No street performer shall block access to an entrance to a  
87 building or bicycle rack.

88 (f) A performer may not place any object on a public sidewalk that results in less than an eight-foot  
89 contiguous sidewalk width being kept clear for pedestrian passage.

90 (g) A performer may not perform with more instruments, props, equipment or other items than such  
91 performer can reasonably transport or remove at one time.

92 (h) A performer may not place his or her instruments, props, equipment, or other items anywhere other  
93 than a performance site during his or her performance.

94 (i) A performer may not leave his or her instruments, props, equipment or other items unattended.

95 (l) A performer may not block or obstruct a curb cut.

96 (j) A performer may not generate noise or sound that violates the provisions of Chapter 13 "Noise" of  
97 this code.

98 (k) A performer shall not use an animal as part of his or her act while on public property, unless the  
99 performer is licensed by the United States Department of Agriculture under the Animal Welfare Act  
100 and provides the Town written proof thereof.

101 (l) A performer may offer recordings of his or her own work provided he or she submitted samples of  
102 such with his or her permit application.

- 103 (m) A performer may not engage in harassment or coercion of a passerby.
- 104 (n) A performer may not establish a performance site within 10 feet of the closest intersection or within  
105 30 feet of another permit holder. In no case shall a performer perform anywhere within a  
106 performance site closer than 10 feet to an intersection.

107 **Sec. 14.5-64. Permit.**

- 108 (a) A permit shall be issued by the Town to each applicant meeting the requirements of this Article  
109 within 7 days of receipt by the Town of a complete application and a fee established by resolution of  
110 the Town Commission subject to the provisions of Section 14.5-71.
- 111 (b) A completed application for a permit shall contain the applicant's name, address, date of birth, photo,  
112 telephone number, and copy of the driver's license or other government issued identification of the  
113 applicant, and shall be signed by the applicant.
- 114 (c) The Town shall refer the application to the Chief of Police, who will conduct a background check on  
115 the applicant. Upon receipt of the appropriate reports, the Chief of Police shall forward them to the  
116 Town, together with any other relevant information from the files regarding the applicant.
- 117 (d) A permit shall be valid from the date on which it is issued through December 31 of the year in which  
118 it is issued.
- 119 (e) A permit shall contain the name, picture and permit number of the applicant plus the months and  
120 year in which the permit is valid.
- 121 (f) A permit shall be non-transferable.
- 122 (g) Upon issuing a permit, the Town shall also issue the performer a printed copy of this Article and an  
123 identification tag, containing the name, photograph, permit number and expiration date of the permit.

124 **Sec. 14.5-65. Denial of Permit.**

125 The Town shall deny an applicant's application for a street performer's permit if an  
126 investigation of the applicant or if the applicant's application indicates that the applicant:

- 127 (1) Has failed to pay required permit fees;
- 128 (2) Has been convicted of a felony or as a sex offender by any state or Federal court  
129 within the past five years; or
- 130 (3) Is a registered sex offender in any state.

131 **Sec. 14.5-66. Display of Permit.**

132 A performer shall ~~wear~~ show the identification tag performance permit while performing within the  
133 Town under the Permit. ~~to any police officer of the Town upon request.~~

134 **Sec. 14.5-67. Permitted Performances.**

- 135 (a) Performances may take place in the following locations:
- 136 (1) In public areas, except those excluded pursuant to Section 14.5-68; or

- 137 (2) On private property, if the performer has obtained the written permission of the owner of such  
 138 property or other person with authority to grant such permission with respect to such property;
- 139 (b) Performances may take place between 10:00 a.m. and 10:00 p.m. Sunday - Thursday, 10:00 a.m.  
 140 and 10:30 pm Friday and Saturday unless otherwise restricted by the Town Manager.
- 141 (c) A performer may not block the passage of the public through a public area. If a sufficient crowd  
 142 gathers to see or hear a performer such that the passage of the public through a public area is  
 143 blocked, a police officer may disperse the portion of the crowd that is blocking the passage of the  
 144 public. Said police officer may require the performer to relocate to a location that can accommodate  
 145 the crowd.
- 146 (d) No performer shall perform at a distance of less than 30 feet from another performer that already is  
 147 performing.
- 148 (e) No performer shall perform at a distance of less than 50 feet from the boundaries of a Town  
 149 permitted Special Event.
- 150 (f) The use of a performance site by a permit holder is on a daily, first-come, first served basis. No  
 151 permit holder may reserve a location; and each permit holder shall abandon a location at the end of  
 152 his or her working day, including the removal of all personal property of the permit holder.

153 **Sec. 14.5-68. Exclusion of Public Areas.**

154 At the discretion of the Director of Municipal Services or Town Manager, certain designated areas  
 155 may be excluded from further performances in public emergencies, to prevent conflict with permitted  
 156 special events, construction or Town activities, or for other health or safety reasons.

157 **Sec. 14.5-69. Acceptance of Contributions.**

- 158 (a) A performer may accept contributions during the performance and such acceptance shall not  
 159 constitute a violation of "begging" or "panhandling" conduct under the provisions of Section 14-7. No  
 160 performer shall solicit donations verbally. However, a box, jar, musical case or similar item may be  
 161 left open to indicate that donations will be accepted without violation of Section 14-7 of the Code.
- 162 (b) Performing, and related acceptance of contributions, if such occur in a performance site and as  
 163 provided in this Article, will not constitute violations under the provisions of Sections 14-11 or 14-17.

164 **Sec. 14.5-70. Compliance.**

165 The conduct and behavior of all performers will be in compliance with the existing codes, which  
 166 include, but are not limited, to the Noise Ordinance and the laws on the obstruction of sidewalks and  
 167 other passageways, as well as off-site vending, pamphleteering, advertising or solicitation.  
 168 Performances must not contain any obscenity as defined by state law.

169 **Sec. 14.5-71. Enforcement, Suspension or Revocation of Permit.**

- 170 (a) Any performance permit may be revoked for the protection of the public by the Town Manager after  
 171 due hearing for the following reasons:
- 172 (1) Violation of any section of this article or the Code of Ordinances;
- 173 (2) Inaccuracies or misrepresentations upon initial application for the performance permit;

- 174 (3) Conviction of felony or as a sex offender by any state or Federal court within the past five years;  
175 (4) Current registration as a sex offender in any state; or  
176 (5) Any other matters the Town Manager finds affect the health and safety of the residents.

177 (b) In the event the Town determines there are grounds for suspension, revocation or other action, as  
178 provided in this Article, the Town shall schedule a hearing before the Town Manager and notify the  
179 permittee in writing and the grounds upon which such action is proposed, no less than 7 days prior to  
180 the date of the hearing. In the event of an emergency the hearing may be held no less than 24  
181 hours after notice to the permittee.

182 (c) Notice shall be deemed given when a notice has been properly addressed to the address as  
183 provided by the permittee on the performance permit application, stamped and deposited in a U.S.  
184 Postal depository or collected by an employee of the U.S. Postal Service,. Emergency notice shall  
185 be attempted by all available avenues including hand delivery.

186 (d) The Town Manager may:

- 187 (1) Find no violation.  
188 (2) Temporarily suspend the permit for a time period relative to the severity of the violation, as  
189 determined appropriate by the Town Manager.  
190 (3) Revoke the permit for the remainder of its term.  
191 (4) Direct or take such other action as deemed appropriate by the Town Manager including but not  
192 limited to setting a fine amount not to exceed \$250 depending on circumstances, or establishing  
193 other conditions of the performance permit.  
194 (5) Should the facts and circumstances suggest the public is endangered or may be harmed if  
195 immediate action is not taken, the Town Manager may suspend or revoke a permit immediately  
196 subject to appeal as provided herein. Such appeal shall not stay the suspension or revocation  
197 or other action of the Town Manager.  
198 (6) A finding of violation twice within a one-year period shall require revocation of the permit for the  
199 remainder of its term.

200 (e) Nothing in this Article shall take away other enforcement powers of the Town, Special Magistrate or  
201 any other agency provided by the Code or statute.

202 **Sec. 14.5-72. Appeal of denial or Town Manager's order.**

203 (a) Any applicant or permittee may appeal the denial of an application or the order of the Town Manager  
204 by filing an appeal thereof with the office of the Town Clerk on such forms as the Town Clerk may  
205 prescribe for such purpose. Such application shall contain the following information:

- 206 (1) Name, home and business address and telephone number of the appellant;  
207 (2) A copy of the denial or order being appealed;  
208 (3) A description of the facts, circumstances or defenses of the appellant supporting the appeal;  
209 (4) If the appeal concerns a suspension or revocation, then a copy of the applicable performance  
210 permit; and  
211 (5) The appropriate appeal fee as established by resolution of the Town Commission.

212 (b) Upon the filing of an appeal, the Town shall schedule a hearing before the Town Commission at the  
213 next regular meeting of such Commission occurring more than 15 days from the date of the filing of

214 such appeal and shall provide no less than 10 days written notice of the hearing date to the  
215 appellant.

216 (c) At any hearing in connection with the appeal, the appellant shall be entitled to appear in person or  
217 through counsel and to submit such evidence as the appellant shall deem appropriate. The formal  
218 rules of evidence shall not apply, but the Mayor of the Town Commission shall conduct such hearing  
219 so as to ensure the appellant a full opportunity to respond to the action being appealed. Hearsay  
220 evidence shall be accepted, but the Town Commission shall determine its probative value.

221 (d) The Town Commission shall determine whether, under the facts and circumstances of each matter,  
222 the denial of the application or order of the Town Manager was reasonably justified.

223 (e) The Town Commission's finding shall constitute a final determination subject to judicial review in a  
224 court of competent jurisdiction.

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226 **Section 3. Codification.** This Ordinance shall be codified in accordance with the  
227 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall  
228 become and be made a part of the Town of Lauderdale-By-The-Sea Code of Ordinances; and that  
229 the sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be  
230 changed to "section", "article" or such other appropriate word or phrase in order to accomplish such  
231 intentions.

232 **Section 4. Severability.** If any section, sentence, clause, or phrase of this Ordinance is  
233 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding  
234 shall in no way affect the validity of the remaining portions of this Ordinance.

235 **Section 5. Conflicting Ordinances.** All prior ordinances or resolutions, or parts thereof,  
236 in conflict herewith are hereby repealed to the extent of said conflict.

237 **Section 6. Effective Date.** This Ordinance shall be in full force and effect immediately  
238 upon its passage on second reading.

239 Passed on the first reading, this 27<sup>th</sup> day of January, 2015.

240 Passed and adopted on the second reading, this 10<sup>th</sup> day of February, 2015.

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MAYOR SCOT SASSER

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First Reading

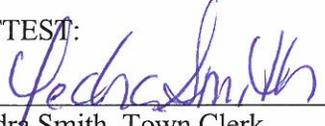
Second Reading

Mayor Sasser  
Vice-Mayor Vincent  
Commissioner Brown  
Commissioner Dodd  
Commissioner Sokolow

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*Aye*  
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*Aye*

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ATTEST:  
  
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Tedra Smith, Town Clerk

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APPROVED AS TO FORM:

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Susan L. Trevarthen, Town Attorney