ORDINANCE NO. 12-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPEALING ORDINANCES 98-1 AND 00-16, WHICH ARE CODIFIED IN CHAPTER 22 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES AND ADOPTING NEW REGULATIONS IN SAID CHAPTER RELATING TO SPECIAL EVENTS; ADOPTING DEFINITIONS; PERMIT REQUIREMENTS; EXEMPTIONS FROM PERMIT REQUIREMENTS; PROVISIONS RELATING TO FEE WAIVERS AND BUDGET ALLOCATIONS; APPLICATION REQUIREMENTS; PROCEDURE FOR REVIEW, APPROVAL AND APPEAL OF DENIAL OF PERMITS; ADOPTING REGULATIONS APPLICABLE TO PERMITS FOR POLITICAL DEMONSTRATIONS; SECURITY FOR UNPAID EXPENSES; INDEMNIFICATION AND LIABILITY INSURANCE; SIGNAGE; NOISE; AND REVOCATION OF PERMITS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Ordinances 98-1 and 00-16 which are codified in Chapter 22 of the Town of Fort Myers Beach Code of Ordinances in Section 22-1 through 22-14 are hereby repealed in their entirety.

Section 2. The following regulations relating to Special Events are hereby adopted and codified into Chapter 22 of the Town of Fort Myers Beach Code of Ordinances as follows:

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.

Sec. 22-2. Permit Required. No person or entity shall 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 require a special event permit:

(a) Events conducted by religious entities, provided such events are conducted entirely on property owned by the religious entity.

(b) 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 not apply.

Sec. 22-4. Fees.

All fees that relate to special events and special events permits shall be established by Town Council by resolution.

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

The Town shall be 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. 22-7. General criteria and limitations.

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

(a) 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.

(b) An individual applicant may not receive a special event permit more than six (6) 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 and provided further that the Town Council shall have the authority to permit an individual applicant to exceed the six (6) 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:

(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 can occur no more often than weekly and for no more than one (1) year on a single application.

(c) 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.

(d) 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 and parking plan shall be included as part of the special event permit application. The location of any accessory structures shall not obstruct traffic or violate any applicable Town, county or state laws.

(e) Any special event that will take place all or in part upon the beach shall be subject to all requirements contained in Section 14-11 of the Land Development Code and any requirements of State or Federal agencies relating to activities that take place on the beach.

(f) The following types of special events must be approved by the Town Council:

(1) Special events with a duration of four (4) days or more where alcohol will be served;

(2) Special events requesting funding; and

(3) Special events where the noise is anticipated to exceed what is permitted by the Town Code.

Sec. 22-8. Application requirements.

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

An application for a special event permit must be filed with the Town Manager not less than forty-five (45) days prior to the date of the event. Applications received less than forty-five (45) days prior to the event will incur an additional permit application fee. Applications received less than ten (10) days before the special event will not be processed.

(b) A permit application shall include the following:

(1) The name of the special event and it 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 specific location(s) within the Town where the special event is to be held. The applicant shall also be required to submit a site plan describing the layout of the special event, including locations of all temporary structures.

(5) 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 special event will take place and for condominium properties, a single written notification to the condominium association shall be sufficient. The notification shall advise the owner(s) 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.

(8) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

(9) Whether any alcoholic beverages will be served and whether appropriate state licenses have been applied for.

(10) If any entertainment will be included, details as to the type of entertainment, times and location shall be provided.

(11) Whether utility services such as electrical power or water will be required.

(12) Proof that a written request for approval of the event has been submitted to all applicable outside state and local agencies.

(13) The Town Manager shall have 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 Section 22-8 and application fee, the Town Manager shall forward copies of the application to all affected Town departments for their review. The Town Manager shall grant or deny an application for a special event permit within fifteen (15) business days after the application is complete. Special event permits requiring Town Council approval shall be scheduled for consideration at the next available 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 the Town Council and the Town Council shall have the right to place conditions on the permit to mitigate any 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 not be entitled to receive any reimbursement from the Town for an 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 be notified in writing of the denial no later than five (5) days prior to the date of the proposed event. Said notification shall state the reasons for the denial and the right of appeal to the Town Council, and shall be sent by registered mail to the applicant.

(b) The applicant shall have ten (10) 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 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 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. 22-13. Litter.

(a) Special event permit holders shall be responsible for ensuring that the area where the event is held is free of all litter and debris within twenty-four hours of the time the special event ends. Events that span more than a twenty-four hour period shall be 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 the authority to contract with a cleaning service and the cost of the clean up shall be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit.

Sec. 22-13. 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. 22-14. Indemnification and Liability Insurance.

(a) Prior to the issuance of the special event permit, the applicant shall be 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, 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. 22-15. Signage.

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

(b) All banners are permitted to hang for a period of not less than two (2) 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 (4) weeks if availability allows. All banners must have grommets that are no less than two feet (2') apart on the top and bottom. Banners can be no larger than sixteen feet (16') in width and three feet (3') 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 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 (5) days prior to event if variable message signs are utilized or fourteen (14) days prior to an event if static signs are utilized. Type and placement of signs shall be determined by Public Works Director.

Sec. 22-16. 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. 22-17. Revocation.

The Town Manager shall have 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 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 4. 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 Council Member List and seconded by Council Member Kosinski and upon being put to a roll call vote, the result was as follows:

Larry Kiker, Mayor	aye	Bob Raymond, Vice Mayor	aye
Joe Kosinski	aye	Jo List	aye
Alan Mandel	aye		

DULY PASSED AND ADOPTED THIS 4th DAY OF JUNE, 2012, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By:_____
Larry Kiker, Mayor

ATTEST:

By:_____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By:_____
FOWLER WHITE BOGGS, Town Attorney