

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING APPENDIX A OF THE CITY CODE TO ESTABLISH NEW RATES FOR ARTIST VENDOR FEES AND AMENDING CHAPTER 18 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "BUSINESS," BY AMENDING ARTICLE XV, ENTITLED "STREET PERFORMERS AND ART VENDORS," BY AMENDING SECTION 18-903, ENTITLED "ARTIST VENDOR CERTIFICATE REQUIREMENTS AND RULES," BY AMENDING SUBSECTION (3)(F) TO PROVIDE THAT ARTIST VENDOR CERTIFICATE FEES SHALL BE SET FORTH IN APPENDIX A TO THE CITY CODE AND BY CREATING SUBSECTION (5) THEREOF, TO INCLUDE A LIMITATION ON THE ISSUANCE OF ARTIST VENDOR CERTIFICATES FOR NONEXPRESSIVE PRODUCTS; BY AMENDING SECTION 18-905 ENTITLED "PERMIT APPLICATION AND RULES" BY AMENDING SUBSECTION (7) TO CLARIFY THAT ARTIST VENDOR PERMIT FEES ARE SET FORTH IN APPENDIX A TO THE CITY CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach issues Artist Vendor Certificates that allow certificate holders to sell handmade products, as defined in Sec.18-903 of the City Code, on public property in various locations throughout the City; and

WHEREAS, the First Amendment to the United States Constitution protects the right of artists whose proposed product is inherently communicative and has nominal utility apart from its expression to sell their art on public property; and

WHEREAS, the First Amendment does not protect the right of vendors whose product is predominantly nonexpressive in nature to sell their products on public property. Although an item may have some expressive purpose, it will be deemed to be predominantly nonexpressive in nature if it has a common and dominant nonexpressive purpose, i.e., has more than nominal utility apart from its expression. A nonexclusive list of examples of items that have more than nominal utility apart from their expression are housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfumes, lotions, candles, jewelry, toys and stuffed animals; and

WHEREAS, the City has seen a proliferation of Artist Vendor Certificate holders selling products that are predominantly nonexpressive in nature on public property; and

WHEREAS, the Mayor and City Commission ordain that products that are fully protected by the First Amendment may be sold on public property pursuant to a validly issued Artist

Vendor Certificate, but further ordain that the number of unprotected products sold pursuant to Artist Vendor Certificates issued by the City should be limited in number; and

WHEREAS, the Mayor and City Commission further ordain that all fees related to the Artist Vendor program shall be set forth in Appendix A and said fees shall be adjusted to adequately reimburse the City funds expended annually to administer the program and enforce the rules set forth in the City Code for Artist Vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 18 of the Code of the City of Miami Beach, Florida, entitled "BUSINESS," be amended, by amending Article XV, entitled "Street Performers and Art Vendors," by amending Section 18-903 thereof, entitled "Artist vendor certificate requirements and rules," by amending subsection (3)(f) to provide that artist vendor certificate fees shall be set forth in Appendix A to the City Code and by creating Subsection (5) as follows and as hereinafter set forth below:

**CHAPTER 18
BUSINESS**

* * *

ARTICLE XV

STREET PERFORMERS AND ART VENDORS

* * *

Sec. 18-903. Artist vendor certificate requirements and rules.

It shall be unlawful for any person to engage in artist vending in the City of Miami Beach without first obtaining an Artist Vendor Certificate.

- (1) *Application.* Each person desiring certification as an artist vendor pursuant to this ordinance shall file an application with the city's business tax receipt office or any such other office as may be designated by the city manager.
 - a. Only those artist vendor certification applications on city forms will be accepted.
 - b. Except as otherwise provided herein, said artist vendor certification application shall specify:
 - i. The artist vendor certificate applicant's name, resident address, place of employment where the work of art is produced, a phone number, electronic mail (e-mail) address or mailing address of the artist vendor certificate applicant or of a person through whom the certificate applicant may always be reached.

- ii. A description of the art ~~or craft~~ item for which the applicant seeks certification.
 - iii. A declaration under penalty of perjury that the art for which the applicant seeks certification is of his or her own creation, and that the applicant neither employs other persons to produce, nor is employed by another person to produce, the art item for which he/she seeks certification.
 - iv. The artist vendor shall provide a copy of their State of Florida Sales and Use Tax Certificate, including the sales tax identification number. Notification from the State of Florida Department of Revenue that the applicable sales tax has not been paid shall constitute a violation of this article and be subject to the fines and penalties set forth in section 18-910.
 - c. The city may charge a nonrefundable artist vendor certificate application processing fee in an amount set forth administratively which is approved by the city commission by resolution.
- (2) *Examination of application.* Upon receipt of an artist vendor certificate application filed pursuant to this article, the city's business tax receipt office, or such other office as may be designated by the city manager, shall coordinate the authentication process of the artist vendor certificate application by the review committee.
- a. The business tax receipt office, or such other office as may be designated by the city manager, shall determine a date for the review committee to consider the artist vendor certificate application, and shall notify the artist vendor certificate applicant of said date. Such date shall occur no later than 60 days after artist vendor certificate application.
 - b. In consideration of the artist vendor certificate application, and consistent with the administrative rules for review of artist vendor certificate applications, the review committee shall:
 - i. Examine representative samples of the applicant's work for the purposes of verifying the information set forth in the artist vendor certificate application, and/or observe the artist vendor certificate applicant in the production of the art for which they seek a certification.
 - ii. After such an authentication process, and for the purposes of further investigation, the artist vendor certificate review committee may: 1) designate one or more of its members to visit the studio or workshop of the applicant to view the applicant's facilities and to further verify that the art ~~or craft~~ item for which the applicant seeks certification is of his own creation; and 2) request further documentation from the artist vendor certificate applicant, including but not limited to receipts or other proof of purchase of arts ~~or crafts~~ or other supplies or raw materials used in creating or producing the art for which the applicant seeks a certification.
- (3) *Issuance of artist vendor certificate.* If the artist vendor certificate applicant's authentication process is satisfactory, no deception was used to obtain the

certificate, the applicant agrees to abide by the terms of this article, and the artist vendor certificate fee is paid, the business tax receipt office, or such other office as may be designated by the city manager, shall issue an artist vendor certificate to the applicant, duly signed, and shall show therein that the person named therein satisfied the authentication process and is entitled to engage in the display and sale of the specific art or craft item set forth in said certificate in accordance with the provisions of this ordinance, unless the applicant's artist vendor certificate has previously been revoked or suspended or the applicant has evidenced a failure to conform to the rules and requirements herein.

- a. The applicant shall be notified by the business tax receipt office regarding the decision on the issuance or denial of the artist vendor certificate. If the artist vendor certificate is denied, the applicant shall be provided with a statement of the reasons for denial. A denial may be appealed to the city manager or his designee within ten days of the issuance of the denial. Appeals from a decision of the city manager or the manager's designee shall be to the appellate division of the circuit court in accordance with the Florida Rules of Appellate Procedure.
- b. Disclaimer. On each artist vendor certificate the following words shall appear: The issuance of this permit does not constitute an endorsement by City of Miami Beach of articles sold pursuant to the terms of this certificate.
- c. Transfer. Artist vendor certificates are nontransferable.
- d. Display. The artist vendor certificate shall contain the name of the artist vendor, a photograph of the artist vendor, a listing of the types of art for which the artist vendor certificate has been issued, and any other information that the city may determine should be placed on the artist vendor certificate. The artist vendor must prominently display the artist vendor certificate at all times.
- e. The term of the artist vendor certificates shall be for no less than one quarter (three months). All artist vendor certificates shall expire on September 30 of each calendar year.
- f. An artist vendor certificate fee shall be as follows, and shall be paid prior to the issuance of an approved artist vendor certificate:
 - i. ~~For a three-month certificate: \$25.00~~
 - ii. ~~For a six-month certificate: \$47.50~~
 - iii. ~~For a nine-month certificate: \$67.50~~
 - iv. ~~For a one-year certificate: \$85.00~~ set forth in Appendix A.
- v. An artist vendor certificate shall be renewable on a quarterly or an annual basis. However, such renewal application may be subject to provisions contained in subsection 18-903(2).
- g. Notwithstanding subsection 18-903(3)e., and as provided for in the administrative rules for artist vendor certificates, failure to pay an artist vendor certificate fee within ten business days of the expiration of a certificate, resulting

in a non-renewal of an artist vendor certificate, shall require the artist vendor to submit a new application for an artist vendor certificate. The artist vendor shall pay the applicable artist vendor certificate application fee and will be subject to provisions contained in subsection 18-903(2).

h. Artist vendor certificate holders are subject to the enforcement, suspension/revocation provisions as set forth in section 18-910.

(4) *Administrative rules.* In addition to the foregoing, the city manager or his/her designee shall develop and impose administrative rules pertaining to artist vendor certificates. All certificate holders shall comply with the administrative rules; failure to do so shall result in the application of fines and penalties pursuant to section 18-910 of this article.

(5) The business tax receipt office, or such other office as may be designated by the city manager, shall issue an artist vendor certificate to any applicant whose proposed product is inherently expressive and has only nominal utility apart from its expression. The business tax receipt office, or such other office as may be designated by the city manager, may issue an artist vendor certificate, on a first-come, first-served basis, to applicants whose product is predominantly nonexpressive in nature, provided, there shall be no more than five (5) artist vendor certificates issued and valid at any one time for such vendors. Although an item may have some expressive purpose, it will be deemed to be predominantly nonexpressive in nature if it has a common and dominant nonexpressive purpose, i.e., has more than nominal utility apart from its expression. A nonexclusive list of examples of items that have more than nominal utility apart from their expression are housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfumes, lotions, candles, jewelry, toys and stuffed animals.

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Sec. 18-905. - Permit application and rules.

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(7) The city may charge a permit application processing fee and a permit processing fee in an amount approved by the city commission ~~by resolution~~ as set forth in Appendix A.

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SECTION 2.

Appendix A to the City Code, entitled "Fee Schedule," is hereby amended as follows:

APPENDIX A – FEE SCHEDULE

FEE SCHEDULE

This appendix includes all fees and charges established by the city commission that are referred to in the indicated sections of the Code of Ordinances:

<i>Section This Code</i>	<i>Description</i>	<i>Amount</i>	<i>Annual Adjustment (References shown are defined at the end of this Appendix A)</i>
	Subpart A. General Ordinances		
	* * *		
	Chapter 18. Businesses		
	* * *		
	<u>Article XV. Street Performers and Vendors</u>		
18-903(3)(f)	<u>Artist Vendor Certificate Fees</u>		
	For a three-month certificate	33.00 <u>66.00</u>	[A]
	For a six-month certificate	61.00 <u>122.00</u>	[A]
	For a nine-month certificate	87.00 <u>174.00</u>	[A]
	For a one-year certificate	108.00 <u>216.00</u>	[A]
<u>18-905(7)</u>			
	Artist vendor and street performer lottery application	65.00 <u>130.00</u>	[A]
	Artist vendor and street performer lottery winner	128.00 <u>256.00</u>	[A]
	Non-profit lottery application fee	171.00 <u>342.00</u>	[A]

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2024.

PASSED AND ADOPTED this _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner David Suarez)

Underline denotes additions

~~Strikethrough~~ denotes deletions

Double Underline denotes additions

~~Double Strikethrough~~ denotes deletions at Second Reading

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney
10/21/2024
Date
RR