

ORDINANCE NO. 1336

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE SPECIAL EVENTS ORDINANCE OF THE CITY AS IT RELATES TO SANDY BEACH EVENTS; PROVIDING OPTIONS TO ELIMINATE OR REDUCE REQUIRED FENCING FOR FREE EVENTS WHICH MEET CERTAIN ADDITIONAL REQUIREMENTS; REQUIRING SANDY BEACH STAGES TO BE CONTINUOUSLY GUARDED; REQUIRING THE NIGHTLY REMOVAL OF ALL SANDY BEACH EVENT FENCING DURING TURTLE NESTING SEASON; MAKING FINDINGS OF FACT; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WITNESSETH:

WHEREAS, on November 13, 2014, the City adopted Ordinance 1322 entitled:

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE SPECIAL EVENTS ORDINANCE OF THE CITY TO IMPOSE ADDITIONAL REQUIREMENTS UPON LIVE ENTERTAINMENT WITH AMPLIFIED SOUND AVAILABLE ON THE SANDY GULF BEACH; LIMITING THE NUMBER AND SIZE OF SUCH EVENTS ON ANY SINGLE DAY; PROVIDING EXCEPTION FOR LIMITED, SPONTANEOUS GATHERINGS; DEFINING SUCH EVENTS; MAKING FINDINGS OF FACT; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE;

and

WHEREAS, on the preceding day, November 12, 2014, the City held a lengthy workshop to receive public comment upon Ordinance 1322 and based upon those comments, as well as comments made during public hearings upon Ordinance 1322, finds that "one size" does *not* necessarily fit all sandy beach events as defined in Ordinance

1322 and that optional fencing (access control) measures may be appropriate for certain sandy beach events which are free and meet other conditions; and

WHEREAS, although it would appear that under contemporary due process standards found by the Florida Supreme Court the addition of such optional fencing requirements would not depart from the essential subject matter of Ordinance 1322 or be such a material change to Ordinance 1322 as to require re-starting the adoption process, nevertheless in light of the extraordinary interest generated by Ordinance 1322, the City desires to address these additions by a separate ordinance; and

WHEREAS, the City also finds that it is necessary to require that any entertainment stage erected on the sandy beach in connection with a special event be guarded against unsupervised use or activity twenty-four hours a day, seven days a week; and

WHEREAS, the City finds that during sea turtle nesting season the fencing required by Ordinance 1322, especially the fencing parallel to the water, may pose a threat to nesting turtles;

NOW THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF PANAMA CITY BEACH.

SECTION 1. From and after the effective date of this ordinance, Article II of Chapter 4 of the Panama City Beach Code of Ordinances is amended to read as follows (deleted text ~~stricken~~, new text underlined):

CHAPTER 4: AMUSEMENTS

ARTICLE II. SPECIAL EVENTS

Sec. 4-16. Definition.

Sec. 4-17. Permit required; purpose

Sec. 4-18. Application for permit.

Sec. 4-19. Application fee.

Sec. 4-20. Additional information.

Sec. 4-21. Action on the application and appeal.

Sec. 4-22. Posting vendor contacts.

Sec. 4-23. Termination of permit granted.

Sec. 4-24. Limitation of sandy beach events on the same day.

Secs. 4-25—4-49. Reserved.

Sec. 4-16. Definition.

The term "special event" shall mean any gathering of persons, reasonably expected to exceed five hundred (500) persons during any one (1) hour, invited by public advertisement for the purpose of witnessing or participating in any entertainment or exhibition, or purchasing or selling any merchandise, food or beverage, or consuming any food or beverage, primarily in open spaces or temporary or permanent venues or structures not customarily, routinely and frequently used for such purposes, or employing parked vans, trailers or other vehicles, which event is reasonably expected to require for its safe and successful execution the provision and coordination of municipal services by the City or the organizer of the event to a degree above that which the City routinely provides under ordinary, everyday circumstances. A parade held on an officially closed, public street or road and lasting no more than two (2) hours is not, without more, a special event.

The term "special event" shall also mean any gathering of persons in excess of five hundred (500) persons in a site entirely on the sandy gulf beach who are engaged in witnessing or participating in any live entertainment involving electronically amplified sound regardless of whether the event is advertised or whether such persons are invited to attend; PROVIDED HOWEVER that if (i) the amplified sound and live entertainment are not directed toward persons on the sandy gulf beach in such a manner as to encourage persons on the sandy gulf beach to become part of the audience of the entertainment, and if (ii) the amplified sound heard on the sandy gulf beach and the visibility of the entertainment are reduced to the fullest extent practicable or feasible without frustrating the purpose of the entertainment, and if (iii) no person associated with the entertainment has solicited or encouraged persons on the sandy beach to assemble or to witness or participate in the entertainment, then an unsolicited and spontaneous gathering of persons on the sandy beach shall not be a special event. This type of special event may also be referred to as a "sandy beach event." As used here, the term "live entertainment" includes by way of example and not limitation concerts, live performances of music or theater, D.J.'s, contests or events with a master of ceremonies.

Sec. 4-17. Permit required; purpose

No person shall organize, stage, promote or conduct any special event without first securing from the City Manager or his designee a special event permit under this Chapter. The purpose of this law is to promote the public health, safety and welfare by requiring special event promoters to develop and demonstrate the ability to execute feasible plans to safely conduct the event, and to permit the City to understand and prepare for any collateral effects of the event in the community.

Sec. 4-18. Application for permit.

Each application for a special event permit required by section 4-17 shall contain the following. **A complete application for a sandy beach event shall be filed, and permit fee paid, no less than thirty(30) days before the opening of the event to the public.**

(1) The name and address of the applicant and if not a natural person the names and addresses of all persons controlling or owning greater than a five (5) percent interest in the applicant or a parent company of the applicant.

(2) The dates and times of the event and a brief description of the activities, goods and services and entertainment to be offered. Additionally, for a sandy beach event specification of whether (1) patrons will be permitted to bring alcoholic beverages into the event (herein a "coolers event"), or (2) patrons will not be permitted to bring alcoholic beverages into the event but patrons will be offered alcoholic beverages within the event (herein an "alcohol sales event"), or (3) alcoholic beverages will be prohibited within the event (herein a "no alcohol event").

(3) An estimate of the largest number of persons anticipated to be in attendance in the event area for each hour of the event (herein, the anticipated, maximum hourly attendance), and a feasible and credible plan for determining the approximate number of patrons actually in attendance in the event area(s) as the event progresses. For a sandy beach event, attendance shall be deemed to be one (1) person for each seven (7) square feet of patron area shown on the site plan required by this section, regardless of anticipated or actual attendance.

(4) A feasible and credible plan for adequate sanitation facilities and sewage, garbage and litter collection and disposal (during and after the event) generated by the event or by its patrons (wherever such garbage or litter may be located), water supply and food service. For the purpose of evaluating any such plans, any rules promulgated by the Department of Health or other executive department pursuant to F.S. Ch. 381 (Public Health), F.S. Ch. 386 (Sanitary Nuisances), F.S. Ch. 509 (Food Service), or similar laws, may be considered.

(5) A feasible and credible plan for flood-lighting the special event and parking areas if any activities are to be offered during darkness.

(6) A feasible and credible plan for adequate parking facilities and plans for transporting or conducting patrons from said facilities to the special event area.

(7) A feasible and credible plan for provision of adequate traffic control, security and emergency vehicle access in and around the special event area.

For a special event other than a sandy beach event, the plan shall provide for at least one (1) person professionally trained in traffic control for every five hundred (500) anticipated, maximum hourly attendees, and at least one (1) certified law enforcement officer or person licensed as a security guard under F.S. Ch. 493 (Class "D" or better) on duty for every one thousand (1,000) anticipated, maximum hourly attendees, with no security or traffic personnel working more than one (1) eight (8) hour shift in any twenty-four (24) hour period. The plan shall include a detailed description of the plan of security, traffic control, communications, fire protection and emergency services, including ambulance service, to be used and how it is to be implemented, and the general background of the training and ability of the personnel to be used in implementing the plan.

For a sandy beach event, the plan shall provide for the following: for a "cooler event" at least five (5) persons professionally trained in house security, at least one of whom shall be a certified law enforcement officer or person licensed as a security guard under F.S. Ch. 493 (Class "D" or better), on duty for every one thousand (1,000) deemed attendees; for an "alcohol sales event" at least three (3) persons professionally trained in house security, at least one of whom shall be a certified law enforcement officer or person licensed as a security guard under F.S. Ch. 493 (Class "D" or better), on duty for every one thousand (1,000) deemed attendees; and for a "no alcohol event" at least at least one certified law enforcement officer or person licensed as a security guard under F.S. Ch. 493 (Class "D" or better) on duty for every one thousand (1,000) deemed attendees. No security personnel may work more than one (1) eight (8) hour shift in any twenty-four (24) hour period. The plan shall include a detailed description of the plan of security, traffic control, communications, fire protection and emergency services, including ambulance service, to be used and how it is to be implemented, and the general background of the training and ability of the personnel to be used in implementing the plan.

(8) A feasible and credible plan for adequate medical facilities at the special event. The staffing guidelines for events presenting a moderate hazard which are set forth below shall be used to evaluate the plan and may be decreased or increased by the City Manager or his designee after consultation with the Chief of Police, the Fire Chief and one (1) or more persons serving as a Director of Emergency Medical Services in Bay County, depending upon whether the event presents a lower or higher hazard.

For an anticipated, maximum hourly attendance rate of five hundred (500) persons or less - none.

For an anticipated, maximum hourly attendance rate of more than five hundred (500) but less than one thousand (1,000) persons - one (1) EMT or paramedic.

For an anticipated, maximum hourly attendance rate exceeding one thousand (1,000) persons - one (1) additional EMT or paramedic per each 2,000 additional, anticipated maximum hourly attendees, or portion thereof.

By way of illustration, moderate hazard events include, but are not limited to, regional events, concerts, carnivals and fairs. Similarly, low hazard events include, but are not limited to, car shows, flea markets, local festivals, craft shows, local sporting events, and organized sporting tournaments. High hazard events include, but are not limited to, an event with stunts or having the potential for special danger to participants or spectators, or the potential for sustained exposure to extreme ambient temperatures. A low or moderate event may present a higher hazard due to extreme temperatures. Higher hazard events may be required to provide an Advanced Life Support Unit with transport capability. Staffing shall be equipped with customary supplies necessary to treat injuries and illnesses commonly associated with outdoor activities or similar events.

(9) Plans demonstrating that all stages, booths, tents, scaffoldings or structures of any nature on, under or within which persons may congregate, shall conform to the applicable building and other construction codes then in effect in the City, **and that any entertainment stage erected on the sandy beach in connection with a special event will be guarded by a person professionally trained in house security and authorized and instructed to prevent unsupervised, public use or activity on or about the stage twenty-four hours a day, seven days a week.**

(10) A list of the names and addresses of all vendors, artists, independent contractors or other persons or firms which will be engaged by or associated with the applicant to offer the goods, services or entertainment comprising the special event, including a description of the goods, services or entertainment offered by each and the name and address of the person who will have on-site responsibility, if different. Should such a list not be available at the time application is made, applicant shall give a written statement to that effect and agreeing to furnish such a list no later than thirty-six (36) hours before the event and acknowledging that failure to timely provide such a list will result in termination of the special event permit.

(11) A site plan showing the location and size of the event area(s) and all parking areas (including required handicap parking), and the location of all other features required by this section. For a sandy beach event, the site plan shall show a cleared east/west corridor on the sandy beach outside the event area(s) adequate to permit the one-way passage of an emergency vehicle, and a cleared east/west pedestrian corridor at and above the wet sand at the waters edge at least twenty five (25) feet wide.

(12) A feasible and credible plan to provide and control safe pedestrian access between parking area(s) and event area(s) which will minimize adverse impacts upon surrounding properties and businesses. For a sandy beach event, a feasible and credible plan to keep the east/west emergency vehicle corridor and the waterfront pedestrian corridor open for traffic at all times.

(13) A feasible and credible plan to enclose, restrict or control access to all parking and event area(s) and to limit the number of persons within the event area(s) to the maximum number anticipated, and a feasible and credible contingency plan to deal with persons in excess of that number to minimize adverse impacts upon surrounding properties and businesses. For a sandy beach event, plans demonstrating that the event area(s) will be enclosed on all sides by fences or other structures adequate to prevent access to the event at any point other than controlled access gates, but also demonstrating adequate egress facilities and routes to clear the event area in case of an emergency. The fences or other structures shall be opaque and a minimum of six (6) feet high so as to prevent persons standing on ground level outside the fence or event area(s) from viewing the entertainment; except that in lieu of a six (6) foot opaque fence on the gulf water side there may be substituted two parallel fences each a minimum of four (4) feet high lying parallel to the gulf water's edge and no less than 10 feet apart. A running, current count of attendees shall be kept at the gate(s) of a sandy beach event and actual attendance shall not exceed the deemed attendance.

During sea turtle nesting season, the fences required by this law for a sandy beach event shall be removed from the beach daily before 9:00 pm and not replaced until after the beach has been inspected for turtle nests the next morning.

Special exception option for a free concert:

Notwithstanding the forgoing, if all of the following criteria are met, an otherwise lawfully permitted sandy beach event shall not be required to erect either an opaque fence parallel to the water or dual fences parallel to the water (herein waterside fencing): (i) persons may attend the event freely without giving any consideration for access, and (ii) no coolers, backpacks, bags, cups, bottles or similar items capable of containing or concealing beverages are allowed to be brought into the event by patrons; and (iii) the application for the special event permit required by section 4-17 contains a feasible and credible plan to control patron access to the event area functionally equivalent to the omitted waterside fencing; and (iv) the patron area used to determine deemed attendance includes the area up to the wet sand at the shoreline; and (v) the application for the special event permit required by section 4-17 contains a feasible and credible plan to permit pedestrians walking east and west along the beach to pass by the event, including times when event attendance is at the maximum; and (vi) the application for the special event permit

required by section 4-17 contains a feasible and credible plan to provide access for emergency vehicles into and through the event area in lieu of the vehicular corridor otherwise required. All other permitting requirements for a sandy beach event shall still apply.

Special exception option for a “corporate village”:

Notwithstanding the forgoing, if all of the following criteria are met, an otherwise lawfully permitted sandy beach event shall be permitted to substitute a fence at least four (4) feet high for the higher, opaque fencing required: (i) persons may attend the event freely without giving any consideration for access, and (ii) within the patron area there are at least three (3) entertainment, demonstration or product stages or tents or a combination of both; and (iii) the platform of every stage is no greater than four hundred (400) square feet, is placed seaward of the dune line where the beach flattens and is at no point higher than two (2) feet above adjacent grade. AS AN ADDITIONAL OPTION, all fencing may be omitted if the patron area used to determine deemed attendance includes essentially all the sandy beach under common ownership or control at the event location, more specifically, the area accessible to patrons bounded by the building line to the north, the wet sand to the south and on the east and west by extensions to the water of the upland owner's east and west property lines. All other permitting requirements for a sandy beach event shall still apply.

(14) To be credible, a plan must include either evidence that the applicant is qualified, experienced and capable of executing it alone, or written commitments from one or more qualified, experienced and capable third parties promising to execute or assist the applicant in executing the plan and acknowledging that the commitment is being made to induce the City to issue a permit for the event.

(15) For events anticipating a maximum hourly attendance rate of one thousand (1,000) persons or more a cash deposit in the amount of two thousand dollars (\$2,000) or one thousand dollars (\$1,000) per day, whichever is greater, but not to exceed five thousand dollars (\$5,000). The return of such deposit, in whole or in part, shall be conditioned upon the applicant timely and completely performing all of the plans submitted with the application or reimbursing the City for all direct and indirect costs incurred to protect public or private health, safety or welfare in the absence of such performance. In the event any such cost shall exceed the amount of the deposit, the applicant shall be liable to the City for such excess to the extent permitted by law.

Sec. 4-19. Application fee.

Application for a special event permit shall be accompanied by a fee of three hundred fifty dollars (\$350.00) for administrative expense. If a sandy beach event permit is not issued due to other sandy beach event(s) occurring on the same calendar day the application fee shall be refunded.

Sec. 4-20. Additional information.

Before denying a permit based upon a written application, the City Manager or his designee shall give the applicant written notice of any deficiencies in the application and provide the applicant an opportunity to present additional written information addressing those deficiencies.

Sec. 4-21. Action on the application and appeal.

(1) The permit shall be deemed granted if the City Manager does not grant or deny the permit in writing within twenty (20) days after receipt of the completed application or additional information if applicable and payment of the application fee. The City Manager's decision shall be based upon the completeness of the application and the feasibility and credibility of the required plans. The City Manager shall deny the application of any person who previously has failed to fully comply with this Chapter, previously submitted a plan required by this Chapter which in execution proved to be inadequate or not feasible, or materially understated or underestimated attendance at an event in the City that was or became a special event (collectively and severally a "Prior Failure") unless such person shall demonstrate by a preponderance of the evidence that the Prior Failure was due to circumstances beyond the person's control and that those circumstances should not have been anticipated by a reasonable person in the position of the applicant at the time. For the purpose of considering a Prior Failure, any act or omission by any person with which the applicant is associated in the current application shall be considered the applicant's failure; that is, a party in interest in an application cannot avoid explaining a Prior Failure by presenting a new individual or entity as the applicant.

(2) A denial shall include the reason for denial and state that the applicant shall have the right to appeal to the City Council the decision of the City Manager by letter filed with the City Clerk within three (3) business days after receipt of the denial. The City Council shall grant or deny the permit based upon information presented by the applicant and the City Manager or his designee in a de novo, quasi judicial hearing held as soon as may be practicable. The City Council's decision, including their reasons therefore, shall be announced at the conclusion of the hearing and entered onto the record thereof which shall constitute the Council's final order in any subsequent proceedings and which may, but shall not be required to, express findings of fact and

conclusions of law. The hearing may be continued from time to time in the sole discretion of the City Council, provided that if the City Council does not render a final order within thirty (30) days after filing of the letter of appeal the permit shall be deemed granted.

Sec. 4-22. Posting vendor contacts.

If the permit is granted, the applicant shall conspicuously display to the public (on a form to be provided by the City Manager) the name, mailing address, email address, and telephone number of each vendor, artist, or other person offering goods, services, or entertainment at the special event, including if different, the name, mailing address, email address and telephone number of the individual with on-site responsibility for the vendor, artist or other person. Such form shall be continuously displayed at the booth or specific location within the special event where such goods, services or entertainment are offered.

Sec. 4-23. Termination of permit granted.

If the permit is granted, the facilities, areas, services and staffing as demonstrated in the application shall be continuously provided during the special event, and any failure to so provide shall result in the automatic suspension of the permit and suspension of the event until full provision is made. Should attendance exceed hourly estimates (or deemed attendance for a sandy beach event) for a period of one (1) hour, the applicant shall immediately limit attendance and provide additional staffing to meet the requirements specified in Sections 4-18 (7) and 4-18 (8) or suspend the event until those requirements are met. Conversely, should actual attendance fall below the hourly estimates (or deemed attendance for a sandy beach event) for a sustained period and appear likely to continue at reduced levels, the City Manager or his designee shall be authorized, but not required, to allow the applicant to reduce staffing to the minimum requirements specified in said sections.

Sec. 4-24. Limitation of sandy beach events on the same day.

Notwithstanding anything to the contrary herein, permits for sandy beach events shall be restricted to the following limits for any one (1) calendar day:

One sandy beach event with deemed attendance in excess of ten thousand (10,000) persons; or

Multiple sandy beach events with aggregate deemed attendance of twelve thousand (12,000) persons where the deemed attendance of no single event is greater than five thousand (5,000) persons; or

Multiple sandy beach events with aggregate deemed attendance of fifteen thousand (15,000) persons where the deemed attendance of no single event is greater than two thousand five hundred (2,500) persons;

A total of six (6) sandy beach events regardless of deemed attendance.

Permits shall be issued in the order that substantially complete applications with the required fee are filed.

Secs. 4-25—4-49. Reserved.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 3 The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 4. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 11th day of December, 2014.


CITY OF PANAMA CITY BEACH

By 
GAYLE F. OBERST, MAYOR

ATTEST:


HOLLY J. WHITE, CITY CLERK

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HOLLY J. WHITE, CITY CLERK