



# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

**BILL NO. 2014-10**

**Street Performers**

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**SPONSOR(S):** Councilor Calvert

**SUMMARY:** The proposed bill includes amendments to the regulations and enforcement of the street performers on public property ordinance, Section 23-8 SFCC 1987.

At the Public Works Committee meeting on 2/10/14, the Committee approved a proposed amendment to the bill, per the attached amendment sheet.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**DATE:** March 19, 2014

**ATTACHMENTS:** Memo from Zachary Shandler, Assistant City Attorney  
Amendments  
Bill  
FIR  
Action Sheet and Minutes – Public Works Committee – 2/10/14  
Action Sheet and Minutes – Finance Committee – 2/17/14  
Action Sheet and Minutes – Public Safety Committee – 2/18/14

# City of Santa Fe, New Mexico

## memo

To: Members of the Governing Body

From: Zachary Shandler, Assistant City Attorney *ZS*

Date: March 18, 2014 for March 26, 2014 Meeting of the Governing Body

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**Item & Issue:**

Comments and Suggestions from Stakeholders on Amendments to Bill No. 2014-10 – An Ordinance Relating to Street Performers on Public Property; Amending Section 23-8 SFCC 1987.

**Summary:**

A number of meetings held with stakeholders (buskers, police, merchants, plaza art vendors, plaza food vendors) during the pendency of the Street Performer a/k/a “Buskers” bill has generated a series of emails and written comments suggesting further *amendments* to be added at Council to the proposed bill. We anticipate that these issues may be raised during the public comment period and the attached table is intended to anticipate these possible amendments (with a brief pro and con on each).

**Requested Action:**

For your review and consideration and to assist you in determining whether you might want to make a motion to add any of these possible amendments to the bill. You may also want to discuss these with Melissa Byers in advance of the meeting.

Attachment: Table of Possible Amendments

TABLE OF POSSIBLE AMENDMENTS TO BILL NO. 2014-10 – STREET PERFORMERS (BUSKERS)

#	Suggested by	Possible Amendment	Pro	Con
1.	Plaza Vendors	All buskers should be required to carry Liability Insurance and be subject to background checks like the plaza vendors.	<ul style="list-style-type: none"> <li>This would provide equivalent requirements with plaza vendors</li> </ul>	<ul style="list-style-type: none"> <li>Placing infringements (i.e. greater requirements) on free speech are more likely to be struck down than placing similar infringements on commerce activities</li> <li>City is putting its name behind the plaza vendors (i.e. they are juried and selected to represent Santa Fe commerce to visitors) and thus vendors should have greater requirements</li> <li>Hard to enforce</li> </ul>
<p>Possible language insertions in Section 23-8.4:</p> <ul style="list-style-type: none"> <li>“<u>Each applicant shall be required to maintain adequate insurance in at least the amounts stated in the NM Tort Claims Act. Such insurance shall provide that the city is named as an additional insured on the policy and that the city is notified no less than thirty (30) days in advance of cancellation of such insurance policy for any reason. As a condition of the license, the street performer shall furnish the city with a copy of a certificate of insurance.</u>”</li> <li>“<u>The application shall include the signature of the applicant acknowledging that the information contained in the application is true and correct to the best of the applicant's knowledge; that the applicant consents to a criminal background check at the expense of the applicant; and that the applicant will comply with all provisions of Section 18-3 and all applicable city, state and federal laws. The applicant's signature shall be notarized.</u>”</li> </ul>				
2.	Plaza Vendors	All Buskers who sell CD's should have a CRS number and pay taxes on their sales	<ul style="list-style-type: none"> <li>This would provide equivalent requirements with plaza vendors</li> <li>Everyone should pay taxes</li> </ul>	<ul style="list-style-type: none"> <li>Not necessary. The busker current application has a line for CRS #</li> <li>CRS usually requires a minimum amount before payment is required</li> </ul>
<p>Possible language insertion in Section 23-8.4:</p> <ul style="list-style-type: none"> <li>“<u>Street performers shall pay municipal gross receipts tax and submit copies of the combined reporting systems (CRS) tax returns to the city manager or designee in a sealed envelope on an annual basis, with the dates of the returns corresponding with the term of the license. Any street performer who fails to deliver the CRS tax returns to the city manager or designee shall be terminated from the busker licensure program.</u>”</li> </ul>				

#	Suggested by	Possible Amendment	Pro	Con
3.	Plaza Vendors	The City should limit the amount of licenses that they issue annually	<ul style="list-style-type: none"> <li>• There are a limited number of <u>plaza vendor</u> licenses and this would provide equivalent requirements</li> <li>• Placing a cap of # of licenses may limit # of buskers available to play on Plaza</li> <li>• In 2013 calendar year, there were 207 licenses (171 year-long licenses and 36 thirty day licenses)</li> </ul>	<ul style="list-style-type: none"> <li>• Placing infringements (i.e. buskers applying for license in the latter part of the year may be shut out if cap was reached earlier) on free speech are more likely to be struck down than placing similar infringements on commerce activities</li> <li>• Placing a cap of # of licenses does not necessarily guarantee the # of the buskers on the Plaza will go down during the summer</li> </ul>
Possible language insertion in Section 23-8.4:				
<ul style="list-style-type: none"> <li>• <u>"A total of one hundred (100) street performer licenses may be issued by the city manager."</u></li> </ul>				
4.	Plaza Vendors	Have every performer applying for a license audition to be sure they are real performers	<ul style="list-style-type: none"> <li>• Ensures buskers are providing better and more decent music</li> </ul>	<ul style="list-style-type: none"> <li>• St. Louis tried this approach and was sued and lost in court.</li> </ul>
Possible language insertion in Section 23-8.4:				
<ul style="list-style-type: none"> <li>• <u>"Street performer licenses may be granted at the discretion of the city manager or designee who shall evaluate applications according to the following selection criteria: (a) compatibility and diversity with Plaza activities; (b) quality of the performance; and (c) experience of the applicant as shown on application."</u></li> </ul>				
5.	Staff	Eliminate the 30 day license because it only costs \$10	<ul style="list-style-type: none"> <li>• Panhandlers who have \$10 apply for this license and misuse the busker license</li> </ul>	<ul style="list-style-type: none"> <li>• Costs of the 30 day license should be kept low for a busker who is travelling town to town</li> </ul>
Possible language insertion in Section 23-8.4:				
<ul style="list-style-type: none"> <li>• <u>"A street performer who performs for no more than one thirty (30) day period per year may obtain a short-term business license."</u></li> </ul>				

#	Suggested by	Possible Amendment	Pro	Con
6.	Plaza Vendors	A license should not be shared with anyone	<ul style="list-style-type: none"> <li>Eliminates a band of buskers staying in a spot for hours but each performer "passing" the license around to justify staying there for more than 2 hours</li> </ul>	<ul style="list-style-type: none"> <li>Not necessary if proposed bill is passed. The proposed bill reads: "At all times street performers shall have and display the performer's business license and have <u>available</u> proof of identification for review by the city."</li> <li>Not necessary as the current license application requires the busker to identify if he/she is an individual or a band (i.e. if a group of buskers are a band they can stay there for two hours) (i.e. but a group of licensed buskers cannot have a jam session).</li> </ul>
Possible language insertion in Section 23-8.4:				
<ul style="list-style-type: none"> <li>"A street performer shall not share the license with another street performer."</li> </ul>				
7.	Plaza Vendors	Busker should be required to stay 50 feet from a plaza art vendors	<ul style="list-style-type: none"> <li>Ensures plaza art vendors can communicate with its customers without too much noise</li> </ul>	<ul style="list-style-type: none"> <li>Most art vendors are on the Palace Avenue side of the Plaza Park, so this may result in an inequitable result with pushing all buskers to the San Francisco Street side of the Plaza Park.</li> <li>A map of fixed busker locations may be easier to enforce</li> </ul>
Possible language insertion in Section 23-8.5:				
<ul style="list-style-type: none"> <li>"Street performers shall stay at least fifty feet (50') away from plaza vendors."</li> </ul>				
8.	Plaza Vendors Downtown merchants	No Amplification of any kind.	<ul style="list-style-type: none"> <li>Ensures plaza vendors and merchants can communicate with its customers without too much noise</li> </ul>	<ul style="list-style-type: none"> <li>Courts have ruled that restriction of amplification of certain instruments = unconstitutional restriction of free speech.</li> </ul>
Possible language insertion in Section 23-8.5:				
<ul style="list-style-type: none"> <li>"Loud speakers, for voice transmission and amplification of music, banging, hawking or yelling are prohibited."</li> </ul>				

#	Suggested by	Possible Amendment	Pro	Con
9.	Staff	There should be 3 fixed spots on the Plaza Park for buskers and the music (including amplification) will be considered too loud if it is plainly audible from 100 feet away or clearly audible from one spot to the next spot.	<ul style="list-style-type: none"> <li>A fixed map of locations may be easier to enforce than current status quo (i.e. Spot #1—on the Plaza Park &amp; Old Santa Fe Trail halfway between the north and south corners: Spot #2—on the Plaza Park &amp; San Francisco Street halfway between the east and west corners: Spot #3—on the west side of the banco surrounding the Obelisk)</li> <li>Provides a manner to limit, but not restrict, excessive amplification.</li> </ul>	<ul style="list-style-type: none"> <li>A fixed map may take away some of the spontaneity of street performance and may just concentrate the tension(s) in three spots.</li> </ul>
Possible language insertions in Section 23-8.5:				
<ul style="list-style-type: none"> <li>“<u>At the discretion of the city, the three locations of the street performers may be designated in the Plaza Park; the Plaza; or the Plaza periphery.</u>”</li> <li>“<u>The sound level shall not be plainly audible one hundred feet (100’) feet away from the performance site or plainly audible at another designated street performer spot on the plaza park.</u>”</li> </ul>				
10.	Plaza Vendors	Busker should be required to move at least 50 feet every two hours	<ul style="list-style-type: none"> <li>Would make clear that moving 2 inches is not sufficient</li> <li>*The Panhandling Ordinance similarly states: “panhandling at one location longer than two hours is prohibited and the panhandler shall stay a minimum of one hundred fifty feet (150’) away from such location and shall not return to that same location for two hours.”</li> </ul>	<ul style="list-style-type: none"> <li>Who is going to measure the 50 feet</li> <li>A map with 3 fixed locations would make clear that the busker would have to move from one spot to the next spot.</li> </ul>
Possible language amendment in Section 23-8.5H:				
<ul style="list-style-type: none"> <li>“<del>Street performers shall remain at one location no longer than two (2) hours and shall not return to that location for two (2) hours, availability of the location permitting</del>” and replace with “<u>Street performance at one location longer than two hours is prohibited and the street performer shall stay a minimum of one hundred fifty feet (150’) away from such location and shall not return to that same location for two hours.</u>”</li> </ul>				

#	Suggested by	Possible Amendment	Pro	Con
11.	Plaza Vendors	A busker's license cannot be used to sell arts and crafts of any kind.	<ul style="list-style-type: none"> <li>Eliminates an unfair advantage over plaza art vendors (who have to be juried to earn right to sell arts and crafts)</li> </ul>	<ul style="list-style-type: none"> <li>Not necessary. Current ordinance reads: "Street performers shall not sell goods or wares on public property at a fixed price except for audio or video recordings."</li> </ul>
12.	Plaza Vendors	<p>Possible language insertion in Section 23-8.5:  <ul style="list-style-type: none"> <li>"<u>Street performers shall not sell arts and crafts goods.</u>"</li> </ul> </p> <p>Buskers should have to pay for a booth during Arts and Crafts Shows</p>	<ul style="list-style-type: none"> <li>Eliminates an unfair advantage over plaza art vendors</li> </ul>	<ul style="list-style-type: none"> <li>Not necessary if the proposed bill is passed. The proposed bill reads: "<u>Any performance at such events... provided the performer has received a special event vendor license.</u>"</li> </ul>
13.	Plaza Vendors	<p>Possible language insertion in Section 23-8.5:  <ul style="list-style-type: none"> <li>"<u>Street performers cannot perform during events for which a city permit has been issued so as not to detract from the state purpose of the permit.</u>"</li> </ul> </p> <p>Buskers are not allowed to play on the bandstand stage</p>	<ul style="list-style-type: none"> <li>Ensures plaza art vendors (which are on the Palace Avenue side of the Plaza) can communicate with its customers without too much noise</li> <li>Avoids liability issues in case a busker falls off the stage area</li> </ul>	<ul style="list-style-type: none"> <li>Stage may be just as much of a part of the Plaza Park as any other part</li> </ul>
		<p>Possible language in Section 23-8.5:  <ul style="list-style-type: none"> <li>"<u>Street performers cannot perform on the bandstand.</u>"</li> </ul> </p>		

<p>14. Downtown merchants</p>	<p>Buskers are not allowed under the portals around the Plaza.</p>	<p>• Provides a clear statement for enforcement purposes</p>	<ul style="list-style-type: none"> <li>• Placing infringements (i.e. greater restrictions on areas) on free speech are more likely to be struck down than placing infringements on commerce activities</li> <li>• Proper enforcement of the 150' zones would likely preclude a busker from performing under the portals if another busker was performing across the street on the Plaza Park</li> <li>• Proposed bill bars performance 20 feet from the entrance to a building</li> </ul>
<p>Possible language insertion in Section 23-8.5:</p> <ul style="list-style-type: none"> <li>• <u>“Street performers cannot perform under the portals in the four streets surrounding the plaza park.”</u></li> </ul>			
<p>15. Staff</p>	<p>Busker must stay 150 feet from entry/exit point of special event unless they have a special event vendor license.</p>	<ul style="list-style-type: none"> <li>• Clarifies the term “infringe” in Section 23-8.5(D)</li> </ul>	<ul style="list-style-type: none"> <li>• *May take away some of the spontaneity of street performance</li> </ul>
<p>Possible language insertion in Section 23-8.5D:</p> <ul style="list-style-type: none"> <li>• <u>“Street performers shall not be within one hundred and fifty (150) feet from the entry or exit point on events for which a city permit has been issued....”</u></li> </ul>			

**CITY OF SANTA FE, NEW MEXICO**  
**PROPOSED AMENDMENT(S) TO BILL NO. 2014-10**  
**Street Performers**

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**Mayor and Members of the City Council:**

**I propose the following amendment(s) to Bill No. 2014-10:**

1. On page 3, line 10, after “year”, *insert* “and shall receive a written “Busker Guidelines” from finance department staff”
2. On page 4, line 3, after “A”, insert “police officer may ask the performer to leave the location if he is in violation of this subsection, however, a”
3. On page 5, line 2, after “than”, *delete* “9:00 p.m.” and *insert*, “midnight, except at city parks and recreation areas, including the Plaza Park, where the curfew is 10:00 p.m. in accordance with subsection 16-13.6 SFCC 1987.”

Respectfully submitted,

\_\_\_\_\_  
Councilor Chris Calvert

ADOPTED: \_\_\_\_\_  
NOT ADOPTED: \_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

**CITY OF SANTA FE, NEW MEXICO  
PROPOSED AMENDMENT(S) TO BILL NO. 2014-10  
Street Performers**

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**Mayor and Members of the City Council:**

**I propose the following amendment(s) to Bill No. 2014-10:**

1. On page 4, line 1, after “or”, *insert* “stand within twenty (20) feet of an”
2. On page 9, line 7, after “complaint” *insert* “and if the finance director fails to hold a hearing, then the complaint shall be dismissed.”
3. On page 10, line 15, *insert* the following new section:  
    **“Section 8. Review.** In a public meeting, no later than six (6) months after the effective date of this Ordinance, the public safety committee shall review and evaluate the effectiveness of the Ordinance.”

Respectfully submitted,

\_\_\_\_\_  
Public Safety Committee

ADOPTED: \_\_\_\_\_  
NOT ADOPTED: \_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk



1 for a crowd, therefore, public safety matters occur because sidewalks, passageways, streets or  
2 entrances to buildings are blocked; and

3 F. Conflicts among street performers, between street performers and local businesses  
4 and sponsors of permitted events often arise because of the proximity of the street performers to other  
5 street performers, local businesses, or permitted events; and

6 G. Conflicts occur because the sound level of a street performance may interfere with  
7 other street performances, business dealings or other permitted events; and

8 H. In order to [~~facilitate and encourage~~] allow street performers, there is a need to  
9 establish regulation and licensing standards for street performers related to the times and public  
10 locations for street performances, distance requirements, public safety and compliance with current  
11 ordinances.

12 **Section 2. Subsection 23-8.2 SFCC 1987 (being Ord. #2009-50, §3) is amended to**  
13 **read:**

14 **23-8.2 Purpose.**

15 The purpose of this section is to [~~ensure the ability of street performers to perform~~] support  
16 responsible street performances in public spaces and to promote harmony among street performers,  
17 local businesses, permitted event sponsors, residents and visitors to Santa Fe by:

18 A. Addressing public safety concerns; and

19 B. Balancing [~~the interests of the street performers~~] street performances with interests  
20 [~~these~~] of the local businesses, permitted event sponsors, residents and visitors to Santa Fe; and

21 C. Establishing regulation and licensing standards for street performers.

22 **Section 3. Subsection 23-8.3 SFCC 1987 (being Ord. #2009-50, §4) is amended to**  
23 **read:**

24 **23-8.3 Definitions.**

25 As used in this section:

1           *Perform or performance* means entertainment such as, but not limited to reciting or singing,  
2 acting, dancing, miming, pantomiming, playing a musical instrument or performing a theatrical or  
3 literary work.

4           *Street performer* means an individual who performs, as defined herein, on public property  
5 within the city of Santa Fe and accepts gratuities from others.

6           **Section 4.       Subsection 23-8.4 SFCC 1987 (being Ord. #2009-50, §5) is amended to**  
7 **read:**

8           **23-8.4           Business License Required.**

9           A.       Street performers shall be required to obtain a city business license in accordance  
10 with Section 18-1 SFCC 1987, which may be applied for each calendar year.

11          B.       Only one (1) member of a street performer group is required to obtain a business  
12 license, unless a member or members of the group also perform individually, then that member or  
13 those members shall be required to obtain an individual business license.

14          C.       A street performer who performs for no more than one thirty (30) day period per year  
15 may obtain a short term business license.

16          D.       Street performers shall pay license fees in accordance with subsection 18-8.10 SFCC  
17 1987

18          E.       At all times street performers shall have available and display the performer's  
19 business license, and have available proof of identification for review by the city.

20           **Section 5.       Subsection 23-8.5 SFCC 1987 (being Ord. #2009-50, §6, as amended) is**  
21 **amended to read:**

22           **23-8.5 Regulations.**

23           Street performers may perform on public property within the city of Santa Fe, but shall  
24 comply with the following regulations.

25          A.       Street performers shall not block, in whole or part, or cause the blocking, in whole or

1 part, of any sidewalk, passageway, street, alley, or entrance to a building. If a performer attracts a  
2 crowd sufficient to obstruct the public way, a police officer may disperse the portion of the crowd that is  
3 creating the obstruction. A police officer shall not ask the performer to leave the location unless other  
4 reasonable means of restoring the public safety have been exhausted.

5 B. Street performers may accept contributions of money or property at their  
6 performance, in exchange for representations of their own work, except that street performers shall not  
7 exchange any type of food product or vegetation, on public property. Street performers shall not sell  
8 goods or wares on public property at a fixed price except for audio or video recordings.

9 C. Street performers shall not perform on private property unless permission is granted  
10 from the property owner.

11 D. Street performers shall not infringe on events for which a city permit has been issued so  
12 as not to detract from the stated purpose of the permit including, but not limited to, Indian Market, Spanish  
13 Market, Fiesta Arts and Crafts, Fiesta and midday or evening performances at the bandstand on the  
14 Plaza. Any performance at such events shall only be with the written permission of the sponsor and  
15 provided the performer has received a special event vendor license [~~provided that a copy has been~~  
16 ~~filed prior to the event with the police department~~].

17 E. Use of fire, spray paint or aerosol in performances is prohibited.

18 F. Street performers shall stay at least one hundred fifty feet (150') away from other street  
19 performers.

20 G. The sound level from street performances shall be kept at such a level that other street  
21 performances are not disturbed. The sound level shall not be plainly audible one hundred (100') feet away  
22 from the performance site. A performer or group of performers may use sound battery powered portable  
23 amplification as long as this sound level is not exceeded. A performer or group of performers may not use  
24 public power sources or portable generators.

25 H. Street performers shall remain at one location no longer than two (2) hours and shall not

1 return to that location for two (2) hours, availability of the location permitting.

2 I. Street performers shall perform no earlier than 8:00 a.m. and no later than 9:00 p.m.  
3 [~~11:00 p.m. Sunday through Thursday and 1:00 a.m. on Friday and Saturday nights except at city~~  
4 ~~parks and recreation areas, where the curfew is 10:00 p.m., Sunday through Saturday, in accordance~~  
5 ~~with subsection 16-13.6 SFCC 1987.~~]

6 **Section 6. Subsection 23-8.6 SFCC 1987 (being Ord. #2009-50, §7) is amended to**  
7 **read:**

8 **23-8.6 Other Compliance.**

9 The conduct and behavior of all street performers, unless more specifically provided for  
10 herein, shall be in compliance with the Santa Fe City Code 1987, which includes more specifically:

- 11 A. Subsection 10-2.4 — Noises Prohibited;
- 12 B. Subsection 10-2.5 — Zone District Noise Levels; Maximum; Correction;
- 13 C. Subsection 23-4.2 — Solicitation on Public Property; and
- 14 D. Subsection 23-4.8 — Blocking or Obstructing of Sidewalks.

15 **Section 7. Subsection 23-8.7 SFCC 1987 (being Ord. #2009-50, §8, as amended) is**  
16 **amended to read:**

17 **23-8.7 Criminal Enforcement; Penalty; Administrative Enforcement.**

18 A. *Criminal Enforcement by the Municipal Court:* [~~The police department shall enforce~~  
19 ~~the provisions of Section 23-8 SFCC 1987.~~

20 (1) ~~Upon the first violation of the provisions of this section, the police may issue~~  
21 ~~a written warning to the person violating this section.~~

22 (2) ~~Upon a second and subsequent violation by the same person, the police shall~~  
23 ~~issue a citation.~~

24 (3) ~~Any street performer who violates any provision of Section 23-8 SFCC 1987~~  
25 ~~or any other city ordinance shall, upon conviction, be punished in accordance with the~~

1 provisions of Article 1-3 SFCC 1987.]

2 (1) The police department may evaluate whether the street performer:

3 (a) has a valid license;

4 (b) is performing according to distance restrictions;

5 (c) is abiding by the audible standards; or

6 (d) is abiding by any provision of this section or any provision of the

7 SFCC 1987.

8 (2) If the police department concludes that a verbal warning is not enough to  
9 correct the conduct, the police department may issue a criminal citation for municipal court  
10 that shall, upon conviction, be punished in accordance with the provisions of Article 1-3  
11 SFCC 1987.

12 B. Administrative License Enforcement by Finance Director.

13 ~~[(1) If a street performer is in violation of any provision of this section or any~~  
14 ~~provision of the SFCC 1987; or is operating in a manner contrary to the public welfare, then~~  
15 ~~the city finance director may, in his discretion and upon reasonable evidence:~~

16 (a) ~~Send the street performer a notice of violation specifically stating:~~

17 (i) ~~The nature of the violation;~~

18 (ii) ~~Whether there are past due license fees; and~~

19 (iii) ~~If there are past due license fees, order that the past due~~  
20 ~~license fees, plus a penalty that is double the amount due, be paid~~  
21 ~~immediately, upon receipt of the notice;~~

22 (iv) ~~If the fee and penalty are not paid, the provisions of this~~  
23 ~~section or other provisions of the SFCC 1987 are not complied with and the~~  
24 ~~operation contrary to the public welfare is not discontinued within fifteen~~  
25 ~~(15) days after receipt of the notice, the street performer shall surrender his~~

1                   ~~business license to the finance director and the license shall be placed in~~  
2                   ~~suspension until a hearing is held before the finance committee for~~  
3                   ~~consideration of revocation of the business license; or~~

4                   ~~(b) — If the street performer's action creates an immediate and imminent~~  
5                   ~~danger, immediately place the business license in suspension until a hearing is held~~  
6                   ~~before the finance committee for consideration of revocation of the business license.~~

7                   ~~(c) — Any notice of violation shall specify the date, time and place of the~~  
8                   ~~hearing by the finance committee in the event the violations are not corrected. The~~  
9                   ~~street performer shall appear before the finance committee to show cause why the~~  
10                   ~~business license should not be revoked.~~

11                   ~~(2) — If, at the hearing before the finance committee, the street performer fails to~~  
12                   ~~show cause why the business license fee should not be revoked, the finance committee shall~~  
13                   ~~issue a cease and desist order revoking the business license. Such cease and desist order shall~~  
14                   ~~prevent the street performer from performing on public property, for a period of one (1) year~~  
15                   ~~from the date of the hearing.~~

16                   ~~(3) — The hearing before the finance committee shall not be less than thirty (30)~~  
17                   ~~days after the notice provided in paragraph B(1), above, is mailed, via certified mail, to the~~  
18                   ~~address listed on the street performer business license application.~~

19                   ~~(4) — An appearance may be made by counsel and the street performer charged~~  
20                   ~~with violating this section may present evidence and call witnesses to show cause why his~~  
21                   ~~license should not be revoked.~~

22                   ~~(5) — Any street performer aggrieved by the decision of the finance committee may~~  
23                   ~~submit to the governing body a written petition for appeal. Such petition for appeal shall:~~

24                   ~~(a) — Be submitted to the city clerk's office within thirty (30) days of the~~  
25                   ~~date the action appealed was taken by the finance committee.~~

1                   (b) ~~Set forth that such proceedings or assessments were in error in whole~~  
2 ~~or in part, specifying the grounds of the appeal.~~

3                   (c) ~~Be on the agenda of the next regularly scheduled meeting of the~~  
4 ~~governing body, during the evening session. Verbal or written notice shall be given to~~  
5 ~~the appellant at least five (5) calendar days prior to the meeting of the governing~~  
6 ~~body.]~~

7                   (1) The police department may evaluate whether the street performer:

8                   (a) has a valid license;

9                   (b) is performing according to distance restrictions;

10                  (c) is abiding by the audible standards; or

11                  (d) is abiding by any provision of this section or any provision of the

12 SFCC 1987.

13                  (2) If the police department concludes that a verbal warning is not enough to  
14 correct the conduct, the police department may file a written complaint with the finance  
15 director, separately or concurrently with actions taken under Section 23-8.7(A). This will  
16 start the administrative process to revoke the street performer's license.

17                  (3) The police department may also temporarily seize a street performer's license  
18 immediately if the performer is causing any immediate and imminent danger to the public.  
19 The license, if seized, shall be attached to the written complaint.

20 C. *Administrative Licensure Due Process by the Finance Director*

21                  (1) The finance director, upon receipt of a written complaint, shall send the street  
22 performer a notice of violation and a copy of the written complaint via certified mail to the  
23 address listed on the street performer's business license application as well as a courtesy copy  
24 to the police department. The notice of violation shall state:

25                  (a) the nature of the violation;

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(b) whether there are past due license fees;

(c) if there are past due license fees, order that the past due license fees, plus a penalty that is double the amount due, be paid immediately, upon receipt of the notice;

(d) date, time and place of an order to show cause hearing before the finance director, or designee and the hearing must be held within fifteen (15) business days of receipt of the complaint;

(e) that an appearance may be made by counsel and the street performer charged with violating this section may present evidence and call witnesses to show cause why his license should not be revoked; and

(f) that the police department may, but is not required to send, an officer to testify at the hearing and the Finance Director may give the written complaint its due weight based on the factual circumstances of the matter.

(2) If, at the hearing the street performer fails to appear (absent written submittal of a request for a five (5) business day continuance) or show cause why the business license should not be revoked, the finance director shall issue a cease and desist order revoking the business license and shall timely send a copy to the street performer via certified mail as well as a courtesy copy to the police department. Such cease and desist order shall also prevent the street performer from applying for a new license for a period of one (1) year from the date of the hearing.

(3) Any street performer aggrieved by the decision of the finance director may submit to the governing body a written petition for appeal. Such petition for appeal shall:

(a) Be submitted to the city clerk's office within thirty (30) days of the date the action appealed was taken by the finance director.

(b) Set forth that such proceedings or assessments were in error in whole

1                   or in part, specifying the grounds of the appeal.

2                   (c) Be on the agenda of the next regularly scheduled meeting of the  
3                   governing body, during the evening session. Verbal or written notice shall be given to  
4                   the street performer at least five (5) calendar days prior to the meeting of the  
5                   governing body.

6                   D. Performing Without a License; Enforcement by the Municipal Court.

7                   (1) If the police department has temporarily seized a license under Section 23-  
8                   8.7(B)(2), and the street performer continues to perform without a license and the police  
9                   department concludes that a verbal warning to stop is not enough to correct the conduct, the  
10                  performer shall be deemed guilty of a petty misdemeanor and subject to arrest.

11                  (2) If a street performer never obtained a license under Section 23-8.4, and the  
12                  street performer continues to perform and the police department concludes that a verbal  
13                  warning to stop is not enough to correct the conduct, the performer shall be deemed guilty of  
14                  a petty misdemeanor and subject to arrest.

15 APPROVED AS TO FORM:

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17 \_\_\_\_\_  
18 KELLELY A. BRENNAN, INTERIM CITY ATTORNEY

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25 M/Melissa/Bills 2014/Buskers Rewrite 1\_28\_14

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill: X Resolution: \_\_\_\_\_

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): A BILL RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987.

Sponsor(s): Councilor Calvert

Reviewing Department(s): City Attorney's Office

Persons Completing FIR: Rebecca Seligman Date: 02/03/13 Phone: 955-6501

Reviewed by City Attorney: Kelly A. Brunner Date: 2/3/14  
(Signature)

Reviewed by Finance Director: [Signature] Date: 2/4/14  
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:

The purpose of the bill is to support responsible street performances in public spaces and promote harmony among street performers, local businesses, permitted event sponsors, residents and visitors to Santa Fe. Changes to the ordinance would include, addressing public safety concerns; balancing street performances with interests of the local businesses, permitted event sponsors, residents and visitors to Santa Fe; and establish regulation and licensing standards for street performers.

**Section C. Fiscal Impact**

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

X  Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

None that staff is aware of

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**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None that staff is aware of.

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**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

**If the street performers bill is not enacted, the potential for public safety issues would be a concern as well as street performers attempting to perform without enforceable guidelines and licenses.**

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None that staff is aware of

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**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

**Supporting the changes to the street performers bill would amend and create specific guidelines, including licensing by which street performers would be required to adhere to. This would be a positive change as street performers in turn would be required to follow certain criteria, including licensing and public safety with would be good for our community.**

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Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, FEBRUARY 10, 2014**

**ITEM 17**

REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987 (COUNCILOR CALVERT) (ZACHARY SHANDLER)

**PUBLIC WORKS COMMITTEE ACTION: Approved with Amendment**

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON WURZBURGER	Excused		
COUNCILOR CALVERT, Acting Chair	X		
COUNCILOR IVES	X		
COUNCILOR RIVERA	X		
COUNCILOR TRUJILLO	Excused		

**15. TRANSIT DIVISION**

- **REQUEST FOR APPROVAL OF NEW MEXICO FINANCE AUTHORITY LOAN APPLICATION, AND REPAYMENT PLAN, FOR THE PROCUREMENT OF SEVEN (7) REPLACEMENT TRANSIT BUSES (JON BULTHUIS)**
- **REQUEST FOR APPROVAL OF A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY FOR THE PROCUREMENT OF SEVEN HEAVY DUTY TRANSIT BUSES (COUNCILOR CALVERT) (JON BULTHUIS)**

**Committee Review:**

Finance Committee (Scheduled)  
Council (Scheduled)

02/17/14

02/26/14

Councilor Ives said he was basically looking for a description.

Mr. Bulthuis explained that due to a loss in federal funding this was an application to the New Mexico Finance Authority for purchase of buses.

**Councilor Ives moved to approve the request. Councilor Rivera seconded the motion.**

Councilor Calvert voiced his support of this request.

**The motion passed by unanimous voice vote.**

**17. REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987 (COUNCILOR CALVERT) (ZACHARY SHANDLER)**

**Committee Review:**

Finance Committee (Scheduled)  
Public Safety Committee (Scheduled)  
Council (Request to Publish)  
Council (Public Hearing)

02/17/14

02/18/14

02/26/14

03/26/14

Councilor Calvert noted that changes were made to make it more workable for everyone involved.

Councilor Ives referred to page 6 of the packet and asked what "infringe" meant. If it was distance, he asked if the City permits provided the detail on that.

Mr. Zach Shandler, Assistant City Attorney, said that specific language did not come up but it probably related to the distance and volume. He thought that interpretation sounded reasonable.

Councilor Ives thought it might come under some dispute. He asked Mr. Shandler to look at when infringement would occur and flesh that section out before Council.

**Councilor Ives moved to approve the request. Councilor Rivera seconded the motion.**

Councilor Calvert proposed an amendment on page 4, line 3, after "A", to insert, "police officer may ask the performer to leave the location if he is in violation of this subsection, however, a..."

Councilor Ives thought "exhausted" was pretty strong language and asked if they wanted an officer to spend that much time. He suggested to soften it to say "to a reasonable length of time" maybe.

**The motion and second with Councilor Calvert's amendment regarding language being looked at passed by unanimous voice vote.**

- 18. SANTA FE HOMES PROGRAM (COUNCILOR WURZBURGER) (ALEXANDRA LADD)**  
a) **REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO THE SANTA FE HOMES PROGRAM ("SFHP"); AMENDING SECTION 14-8.11 SFCC 1987 TO MAKE PERMANENT THE CURRENT PERCENTAGE REQUIREMENTS OF THE SFHP; AMENDING SECTION 26-1 SFCC 1987 TO UPDATE THE LEGISLATIVE FINDINGS, TO ESTABLISH THE SCHEDULE FOR PAYMENTS IN LIEU OF CONSTRUCTING UNITS FOR SFHP DEVELOPMENTS WITH TWO THROUGH TEN TOTAL UNITS, TO MAKE PERMANENT THE CURRENT PERCENTAGE REQUIREMENTS OF THE SFHP AND TO MAKE VARIOUS OTHER CHANGES TO THE SFHP ORDINANCE.**

**Committee Review:**

Planning Commission (Approved)	01/09/14
Community Development Commission (No quorum)	01/15/14
Finance Committee (No quorum)	01/21/14
Council (Request to Publish)	01/29/14
Finance Committee (Approved)	02/03/14
Council (Public Hearing)	02/26/14

- b) **REQUEST FOR APPROVAL OF A RESOLUTION AMENDING THE ADMINISTRATIVE PROCEDURES FOR THE SANTA FE HOMES PROGRAM ("SFHP") TO REFLECT THE AMENDMENTS APPROVED BY ORDINANCE 2014-\_\_**

**Committee Review:**

Finance Committee (Scheduled)	02/17/14
Council (Scheduled)	02/26/14

**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 02/26/14**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 02/17/14**

**ISSUE:**

23. Request for Approval of an Ordinance Relating to Street Performers on Public Property; Amending Section 23-8 SFCC 1987. (Councilor Calvert) (Zachary Shandler)

**Committee Review:**

Public Works Committee (approved w/amendment)	02/10/14
Public Safety Committee (scheduled)	02/18/14
City Council (request to publish)	02/26/14
City Council (public hearing)	03/26/14

Fiscal Impact – No

**FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM**

**SPECIAL CONDITIONS OR AMENDMENTS**

Approved with amendments.

**STAFF FOLLOW-UP:**

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR BUSHEE	Excused		
COUNCILOR CALVERT	X		
COUNCILOR DIMAS	X		
COUNCILOR IVES	X		
CHAIRPERSON DOMINGUEZ			

3-19-12/FCIssue

Responding to a question, Councilor Dimas said, "I think Kate's already got the idea of what I'm particularly looking for, particularly the liability issues and so forth. I think we need to look a little bit more into it."

**MOTION:** Councilor Dimas moved, seconded by Councilor Ives, to approve this request, with direction to staff to look at the particular liability issues as discussed.

**DISCUSSION:** Councilor Calvert said, "Since the Resolution 'is what it is' and states in the caption 'Supporting efforts to retain younger talent and invigorate Santa Fe's Nighttime Economy...' I would hope that the age of the appointees would be taken into account in that statement, and that we don't have people like me on there making some of these recommendations. I think it would help to take into account the age of the people. I also think taking into account, looking at locations. I've had people talk with me about facilities, maybe a new facility or something like that. I always tell them new facilities are tough. If you can find an existing facility that doesn't have a use at night, or something like that. I'll be honest, if you want to avoid problems..... you do yourself a favor if you look at situations like that so you're not starting out with conflicts with your neighbors and stuff like that. I think that's an appropriate use. If you want to do it in a residential section, hey go for it, but I'm saying you're just asking for more discussion than you probably had intended."

Chair Dominguez said he would add that zoning has a lot to do with that, and Councilor Calvert said he understands, and reiterated that you should pick a place that doesn't cause conflict, so you're starting out on the right path.

Councilor Wurzbarger said, with regard to Councilor Dimas' comment about location, "One of the most fun things I've been to was Saturday night." She said the other best one for her is the Baille de Cascarones, so it seems we could use that space more.

Councilor Dimas said he thinks it's possible to have mixed uses for the space.

**FRIENDLY AMENDMENT:** Chair Dominguez would like to amend the Resolution, page 3, line 19, as follows: "... to the CBQL and the Governing Body." **THE AMENDMENT WAS FRIENDLY TO THE SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY."**

**VOTE:** The motion, as amended, was approved unanimously on a voice vote.

23. **REQUEST FOR APPROVAL OF AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987 (COUNCILOR CALVERT). (ZACHARY SHANDLER) Committee Review: Public Works Committee (approved w/amendment) 02/10/14; Public Safety Committee (scheduled) 02/18/14; City Council (request to publish) 02/26/14; and City Council (public hearing) 03/26/14. Financial Impact - No.**

A proposed Amendment to this bill, submitted by Councilor Calvert, is incorporated herewith to these minutes as Exhibit "1."

**MOTION:** Councilor Calvert moved, seconded by Councilor Ives, to approve this request, with the amendments in the packet and the amendments on your desk as well

**DISCUSSION:** Councilor Calvert said the intent of the amendments are to "take an existing Ordinance and tweak it a little so it works better for everybody involved – buskers, merchants, police that have to enforce it. He said one change he would point out specifically is on Ordinance page 3, line 18, "At all times street performers shall have available," and we're adding 'and display' the performer's business license. This makes it easier for everybody and the license owner doesn't get interrupted while they are performing their music, and the police don't have to stop them because it's on display that they are complying and they can move on. It just makes it easier for everybody involved. That's the nature of these amendments. Zach if you want to go over a couple of the other amendments that would be fine."

Mr. Shandler and Councilor Calvert reviewed the proposed amendments which are in the Committee packet and Exhibit "1" which is on the Committee members desks. Please see these documents for specifics of this presentation.

Councilor Calvert said there was discussion about the business license, and the possibility of deleting Section C, Line 14, on Ordinance page 3. He said during certain times of the year there are panhandlers that get a Busker's License for \$15 to solicit funds. Councilor Calvert said they are then competing with people who are here year-round who spend \$45 for a license.

Councilor Dimas asked if there are a limited number of these licenses we authorize, or is it unlimited.

Councilor Calvert said there is no limit on the number of license, but it is somewhat self-limited by the prime location – 150 feet apart, can be there only for 2 hours. He said, "It is somewhat self-limiting because any number of people can have them, but not every place is productive. If you want to go and play to your heart's content where there is nobody located, that's fine."

Councilor Dimas said he things having an unlimited number of licenses, eventually we are start to run into problems with fights out there over who has the select position.

Councilor Calvert said, "To a certain extent, I think it requires some coordination among the buskers themselves. And I'm not going to tell you there haven't been fights, there was one at the Railyard, I believe. But that's something that, what, do we want to legislate all of those things, personal behavior and stuff like that. In all those instances, I'm not sure we want to get into that level of detail. I think for the most part this has been working. I understand that some merchants aren't happy with it, but I think that they are confusing the buskers with the panhandlers. And so I think that's why I had that concern about the temporary license, because I think that makes it easier for the panhandlers to quote, be legitimate. This is the way it is right now, and as we have further discussion, if anybody wants to change that, that's

fine. I think the few changes we've made, will make it work better for everybody. Is everybody happy about everything. No, but I think that's the nature of any legislation and compromises that nobody gets everything they want. So I think this will make it work just a little better, and that's all I can say."

**VOTE:** The motion was approved unanimously on a voice vote.

\*\*\*\*\*  
**END OF CONSENT CALENDAR DISCUSSION**  
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Chair Dominguez asked that the Committee hear Items #27, #28 and #29, before hearing Item #26.

**MOTION:** Councilor Ives moved, seconded by Councilor Calvert, to reconsider the previous action to approve the agenda, to amend the agenda to hear Items #27, #28 and #29, before hearing Item #26, and to approve the agenda as amended..

**VOTE:** The motion was approved unanimously on a voice vote.

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**DISCUSSION**

**27. STAFF SUMMARY ON PARKS BOND AUDIT. (ISAAC PINO)**

A notebook of information was provided to the Committee by staff. A copy of the notebook is on file in and copies can be obtained from the Public Works Department.

Chair Dominguez said this has been taken to POSAC, and from what he has read, there are still lots of questions.

Isaac Pino said, "You are correct, we are at Finance in November, and subsequent to that, we published the questions POSAC had put together and provided them to all of you. And then subsequent to that, we provided the questions along with our answers, such as they were at that time. We went to the Public Works Committee in January and did a brief presentation there. We've been on the POSAC agenda in December, January and now again in February, so it's a rolling item for additional information, questions that come up, more detail requested. And we were at BTAC in January. We had about a 3 hour meeting that particular evening to vet everything they were interested in."

Mr. Pino continued, "And so we have been available for all of the committee meetings where it made sense to go through those questions, or any associated information. Now the thing that is missing still that apparently is very tedious work, because every single time she's asked for it to be reviewed, is the

**ACTION SHEET**  
**ITEM FROM PUBLIC SAFETY COMMITTEE MEETING OF 02/18/14**

**ISSUE:** Proposed bill includes amendments to the regulations and enforcement of the street performers on public property ordinance section 23-8 SFCC 1987

**PUBLIC SAFETY COMMITTEE ACTION:** Recommend approval with additional language

**SPECIAL CONDITIONS OR AMENDMENTS:** (1) add 10 feet from doors (2) dismissal after 15 days if hearing is not conducted

**STAFF FOLLOW UP:** Staff to review no later than 6 months

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO	X		
VICE-CHAIRPERSON HARRIS		X	
MEMBER MIKE MIER	X		
MEMBER NANCY OWEN-LEWIS	X		
MEMBER PETER MIZRAHI	X		
MEMBER MIKE BOWEN	ABSENT		
MEMBER CHRIS RIVERA	X		

DISK fc1/fcissue

4. Old Business  
NONE

5. New Business

- a. Mid Year Adjustment-Decrease from "cash" to increase "Detention Center" line item for jail costs (Nancy Jimenez)

Ms. Jimenez reported that they have been billed for 6 months for the jail and those bills have been paid. They have taken an average for the next 6 months and are about \$230,000 short. As we do more arrests then of course the jail bills increase. There is \$243,000 in cash reserves from fees and services that the court has billed to the individuals and is not tied in to any other expenses. The request is to use the reserve fund balance to pay for the next 6 months jail cost.

Dr. Mier asked what else the cost reserve is used for. Ms. Jimenez said they are not allocated; it actually builds up over the years. It is normally earned at about \$6000-\$7000 a year and this has accumulated in the last 9 years or so and has not been allocated.

*Dr. Mier moved to approve Mid Year Adjustment-Decrease from "cash" to increase "Detention Center" line item for jail costs, second by Mr. Harris, motion carried by unanimous voice vote.*

- b. Proposed ordinance relating to street performers on public property; amending section 23-8 SFCC 1987 (Councilor Calvert, Zachary Shandler)

Major changes:

Page 3-23-8.4-E At all times street performers shall have available and display the performer's business license, and have available proof of identification for review by the city.

Page 3 and 4 23-8.5-A Street performers shall not block, in whole or part or cause the blocking in whole or part of any sidewalk, passageway, street, alley or entrance to building. If a performer attracts a crowd sufficient to obstruct the public way, a police officer may disperse the portion of the crowd that is creating the obstruction. A police officer shall not ask the performer to leave the location unless other reasonable means of restoring the public safety have been exhausted.

Page 4 - D change as stated - and provided the performer has received a special event vendor license [provided that a copy has been filed prior to the event with the police department].

Page 4 regarding distances - G changes as stated - The sound level shall not be plainly audible one hundred (100') feet away from the performance site. A performer or group of performers may use sound battery powered portable amplification as long as this sound level is not exceeded. A performer or group of performers may not use public power sources or portable generators.

Page 5 - I. Time of performance. Street performers shall perform no earlier than 8:00 am and no later than 9:00 pm [11:00 pm Sunday through Thursday and 1:00 am on

~~Friday and Saturday nights except at city parks and recreation areas, where the curfew is 10:00 pm, Sunday through Saturday, in accordance with subsection 16-13.6 SFCC 1987.]~~

It was noted by the City Attorney that the Finance Committee approved the time as midnight.

Criminal Enforcement. The City Attorney stated that there is no such thing as a written warning. There is an oral warning and a written citation. Replaced with:

Page 6 – The Police Department may evaluate whether the street performer:

- (a) Has a valid license
- (b) Is performing according to distance restrictions
- (c) Is abiding by the audible standards; or
- (d) Is abiding by any provision of this section or any provision of the SFCC 1987.

If the Police Department concludes that a verbal warning is not enough to correct the conduct, the police department may issue a criminal citation for municipal court that shall, upon conviction, be punished in accordance with the provisions of Article 1-3 SFCC 1987.

The police department has two options going forward, in this section they can issue a criminal citation or go to Municipal Court. The Municipal Court process will result in a monetary fine, goes in front of the judge but does not address the license issue. Section B, page 6-7-8-9-10 addressed the Administrative License Enforcement by Finance Director.

License Seizure – if license cannot be displayed and they continue to perform without a license and they refuse to stop, the performer will be informed that this is a misdemeanor and subject to arrest. If the street performer has never obtained a license and a verbal warning is issued and they don't come to apply for a license it is a petty misdemeanor and subject to arrest.

City Attorney concludes his presentation.

Discussion:

Dr. Mier: On page 9, line 5, talking about the hearing being held within 15 days, what happens if hearing does not happen in that time frame for some reason.

Mr. Shandler: Mr. Chair, Dr. Mier members of the committee that language is not in this document.

Dr. Mier: In all fairness to street performers, we need language on failure to appear.

Councilor Rivera asked if the Finance Director held a hearing on the 28<sup>th</sup> day would that mean the street performer could not perform for 28 days.

Mr. Shandler: It would depend on the reason for temporary seizure of that license due to danger, in that case they would not be able to perform.

Councilor Rivera said that if they have a license for 3-months and their license is withheld for 30-days you are then hurting the income of this street performer if the city finance director does not have a hearing within the 15 days.

Chief Rael: Suggested 15 days would be an authorization for justification for extension if it hasn't been a hearing. There are circumstances that could prevent the 15 days.

Dr. Mier concurred that the time discussed is a little too long and asked if the Finance Director could appoint a designee to conduct the hearing. 30 days is excessive.

Chief Rael suggested leaving it at 20 days which is reasonable.

Dr. Mier reiterated that 30 days is excessive and recommended that it be 15 days and if there is no hearing the matter should be dismissed.

Mr. Shandler reiterated and clarified that the wording should be 15 days and if the hearing cannot be held that the matter should be dismissed.

Chair Trujillo asked about enforcement, how the police officer will determine allowed radius, will they take out a tape measure.

Councilor Calvert will recommend that a joint discussion be held between the affected groups and city staff, merchants, police department and someone from Land Use to discuss the implementation and use tools as Mr. Shandler has used today to show how the 150 foot radius is determined. We can come up with physical landmarks to help the police officers determine the radius and provide them the tools to be consistent.

The Chair stated the importance to know of the designated areas that will be affected in order to provide strict guidelines on radius for enforcement.

Councilor Calvert said there may not be a map for all designated areas but the understanding of guidelines that will be set and having a meeting with the groups as discussed will provide them an opportunity to work together and get their perspective.

Chief Rael stated that would be helpful to designate areas instead of having a potential overlap. Also concerned that the police department will have a problem enforcing and he would like to have the purpose more clear in order to enforce. In terms of the allocation he would like to have his officers who enforce this and comment on this matter.

Officer Elizabeth Brewer: Understand the laws written up as this will make it easier to enforce the law. Right now we have no law to take care of the issues that they are faced with. When discussing the 15 days to have the hearing, that would be good. It is important to know that even though we talk about their lack of income also keeping in mind that some of these individuals are also threatening lives of the citizens in the community. Talking about space, everyone here is addressing the plaza, what do we do with those on the 4 corners. A lot of them complain because they are trying to talk to customers and the acoustics of downtown even within 150 foot radius bounces off the sound. It is very difficult to be out there measuring 150 feet. This is open space and you are going to hear the performers. The law will be easier to enforce when they are violating. There will be bumps in the road but this is better than not having anything.

Mr. Mizrahi asked what the number of performers is.

It is about 100 at an estimate.

Mr. Mizrahi favors designating a certain spot in support of Chief Rael's comments.

Councilor Calvert made reference to Page 3 of the Ordinance, presented Section C-line 14: the street performer not more than 30 day period and may obtain a short term business license. In Section A - a regular permit is \$30 and in C you can get a short term for \$15 and this could be where the problem comes in the summer time when you get a different type of people who are passing through town and get a \$15 permit. They don't care too much about abiding by the rules as where your year round vendors do care and do abide the rules. This ordinance does not address the panhandlers. The short term people could be those who create the problems and don't cooperate with the local people who do this year long.

Dr. Mier asked Councilor Calvert if he would be opposed to designated spots as suggested. How strictly do you want to regulate? We want to make it easier for the police to enforce.

Councilor Calvert said that he would like to get the input from those who are basically consistent on the plaza and certainly does not want to violate any civil liberty laws.

Dr. Mier commented that there are too many questions that are unanswered before it goes to the city council.

Councilor Calvert clarified that many of the questions and comments are in the ordinance and are not the changes being requested today. He agrees that questions should be answered but in a different forum away from the changes requested today. Councilor Calvert reiterated his appreciation for the questions and discussion today; the designated spaces were part of a previous proposal brought forward and it was voted down.

Public Comments:

Ben Chavez, Vendor on the Plaza

Mr. Chavez introduced himself and has been on the plaza for 30 years. He has worked on the plaza 7 days a week. He likes what is being said today but it doesn't go near enough to what the concerns are. Mr. Chavez stated that his feelings are that this ordinance should not be passed today; it needs a lot of work. The plaza right now is out of control. Police Officers are trying to do their best they can to control what is going on but it doesn't go far enough. Mr. Chavez provided 10 points of concern.

1. It should be required to cover a liability insurance policy because of the guitar cases where they collect money or whatever they have. All the vendors on the plaza are required by the city to carry a liability policy in case someone falls by our stands or whatever.
2. They should have their businesses registered and if they are selling items such as CDs they should be registered with the New Mexico Taxation and Revenue Department. I bring this to your attention because I have had these conversations

and some of these vendors are making \$700-\$800 a day selling CDs, which is more than some of the vendors make, no one says anything about that part.

3. I think the city should limit the amount of licenses that they are issuing. Right now I think there are over 167 licenses and what would happen if they all showed up at the same time. When there is a large amount out there they fight for spaces. I believe that the performers should audition so you can qualify that they are really musicians. There are people out there that will blow a harmonica and put their hat out to collect money and they are not musicians. These individuals have found a great deal to panhandle and pay a cheap price for a license.
4. They should be at least 50' away from any of the vendors on the plaza, food vendors or those across the Palace of the Governors. I have had horrible musicians who have tormented us 10' behind my stand; I can't talk to my customers because their music is so loud.
5. No amplification of any kind on the plaza, we can hear it all the way across over on the other side. The buildings throw the sound around.
6. This license should not be used to sell crafts; right now there are people who are walking around with jewelry and saying they have a right to do that with this limited license?
7. There should be no sharing of licenses. What happens is that someone will come on to the plaza and they won't have a license so someone will lend them their license and they will sit there and start playing and before you know it you have 3-4 different musicians playing under one license. That is a problem.
8. They should have to buy a space during the Arts and Craft shows just like the vendors on the plaza have to do. We have to pay to be on the plaza for any arts and craft shows. Right now the ordinance says for Spanish Market and Indian Market that it should be the same thing as Challenge New Mexico, the Boys and Girls Club, Labor Day...all of the Arts and Craft shows it should be that way.
9. They should also be required to move. Right now the ordinance says that every 2 hours they have to move. I have seen musicians that will move 1 foot over and that counts that they already moved. I think they should be moved, unlike the idea that you can designate where they can play, because 150 feet you can't have more than 2 of them on the plaza at one time otherwise they start a big fight and we have seen it.
10. The city imposes these rules on the vendors on the plaza and I think that they should be imposed on the buskers as well. They are making CDs and selling their expression of music at \$10 a piece and absolutely no revenue for the city whatsoever.

All of us are required to have a license out there. I think this is a good beginning but I think it has a long ways to go before this is settled. What is going on in the plaza is out of control and not only with the buskers but the people that they draw. Sometimes you can be on the plaza and it reeks of marijuana. You call the police and you tell them this is going on, there are ordinances posted all over that indicate all of what can't be done. The cops are there and they say they don't

know how to enforce it? Why are you going to have ordinances if you don't have any intentions of enforcing it? I have pictures if you want to see them.

The Chair expressed his thanks to Mr. Chavez for his comments.

Michael Colms, Street Performer

Mr. Colms said he earns his living downtown and he tries to get something as close to the plaza as he could to live. He travels from Tres Piedras everyday to be able to work. Thank you and I do appreciate the police. I think one of the main weaknesses is that I am hearing people talk in plural, second person saying this and that. The ordinance that has been brought up has been brought up without input from the street performers. I work at the Farmers Market a lot. Just a historical perspective, in 1837 the Santa Fe City Council was meeting to discuss regulating the acrobats that were coming up from Chihuahua so this has been around a while. There will continue to be tweaking the design; there is the difference from high maintenance and low quality or something that is low maintenance and high quality. If you travel around the world you have probably seen a little of both. It is kind of new here, the main problem that I see is that if we could get everyone to follow the few basic rules but what we get is road buskers who come in and I can go in to the corner and they have their amps so loud that you can't perform. We have traditions of respecting each other where this is something we cherish and we work hard to build it up. There are people who come through here and they don't care about Santa Fe, they don't have family here. There have been tens of thousands of positive interaction where people come to visit. I think what is lacking is an on-going dialogue that may have to happen a few times a year where the downtown merchants feel like they can have some representation with the police, the buskers and dialogue about this because a road busker causes problems for everyone and when you can identify who these people are we can tell them that we don't appreciate what they are breaking down. My grandkids live here, my daughter is a teacher here in Santa Fe, so I think that the main thing here is to cooperate with each other. I don't own a firearm. I asked everyone to come together to dialogue so we can support each other.

Mr. John Dressman

The Downtown Merchants Association is looking for two very specific things, one is to not have our entry ways or display areas blocked and two, is to not have the amplification because if you get too much music it becomes noise as other have alluded to. The two things we are looking for is something very specific, something very enforceable using the words No. For instance, no buskers under the portal or no buskers on the sidewalk. Right now the law says they can't block either fully or partially the sidewalk but that has been interpreted by the police and others in the city that they can block as long as a wheel chair can get by but that is not what the ordinance says so we need to interpret it. I have spoken to police officers yesterday and we were talking about that and there is confusion for example the officer said they don't have the right license for amplification. But there is no right license for amplification, there is only one kind of license. We are looking for a way to enjoy the buskers that are there playing good music and I particularly like the cello and the harp. That is the relationship we are looking for; we actually feel that the buskers do contribute something.

#### CLOSED PUBLIC HEARING

Chief Rael stated that this ordinance is a good start; we have long term problems that we have to work on and improve some of the other potential issues. At least this ordinance with the suggested changes that Councilor Calvert has introduced gives us the authority to enforce and address the issues that are there. This will allow us to cite for violations and will allow us the opportunity to arrest those individuals who refuse to cooperate. Although this is not the perfect

solution with the problems we have, it at least gives us that ability to start moving towards that. I appreciate the work that Councilor Calvert has done on this ordinance and my recommendation would be to request approval and that we work towards a longer term solution for some of the problems the vendors have brought up.

Mr. Harris asked if those who hold a 5-year license if they have designated areas.

Mr. Chavez responded that they all have their designated spaces and that is where we set up and they are marked.

Dr. Mier stated that it seems like we are creating laws for a few people. Unfortunately what we have here is we have quite a few things that I would view that perhaps could enhance the ordinance. My question to you is would there be an opportunity to get the stakeholders together, i.e., the police, the vendors, performers and perhaps come to a consensus and focus on what might be improved upon before it is heard by public safety. Based on the conversation today I don't see that the City Council would take action on something that is better than what we have, we would rather forward something that perhaps is even better. Dr. Mier asked Councilor Calvert and Chief Rael if there was a sense of urgency, is this something that could come back in 30 days. Dr. Mier feels that there are too many questions unanswered and too many issues unsolved.

Dr. Mier said he would be ready to make a motion to table this item.

Councilor Calvert stated that they have solicited input and have received comments from various people and have allowed over 30 days for response was helpful and sufficient to reach this point. Councilor Calvert agreed that it would be good to get everyone together in one room.

Councilor Rivera said he knows this has been looked at as to what other cities do and asked to here from Mr. Shandler.

Mr. Shandler responded yes, they have researched and over a dozen other states.

Councilor Rivera asked if we would be able to limit the amount of licenses and if there could be a time limitation for amplification.

Councilor Calvert added that he is aware of the buskers and/or a musician being too close to the entry of the doorways such as Starbucks and it takes a lot of time away from city staff to handle these complaints without any enforcement tools.

Dr. Lewis asked Chief Rael if there was an urgency to pass this ordinance or if we could wait to meet with the stakeholders to discuss the concerns.

Chief Rael stated that the weather is warming up and the officers will lack the ability to enforce. This ordinance would help to enforce and take action.

*Dr. Nancy Owen Lewis moved to approve with the understanding that there be a 6 month review process, with the additional language - Page 3-4 from the proposed ordinance: Street performers shall not block, in whole or part, or cause the blocking, in whole or part of any sidewalk, passageway, street, alley, [new language]and will remain 10' away from any entrance to a building or store, second by Mr. Mizrahi, motion carried by unanimous vote.*

Discussion:

Councilor Calvert stated that there did not need to be a month waiting period to get the stakeholders together to have a discussion on the concerns.

Councilor Rivera asked if the sponsor would accept additional language to the motion, Page 3-4 from the proposed ordinance: Street performers shall not block, in whole or part, or cause the blocking, in whole or part of any sidewalk, passageway, street, alley, *[new language]* and will remain 10' away from any entrance to a building or store. Accepted by Dr. Nancy Owen Lewis.

- c. Proposed resolution directing the Traffic Engineering Division to reconstruct the median at Zia Road and Galisteo Road so as to restrict left turn movements to and from Galisteo Road and to increase the length of Zia's Eastbound dual left turn lane at the St. Francis Drive signalized intersection (Councilor Dimas, John Romero)

Mr. John Romero, Traffic Engineer explained that the intent of this resolution is to improve the efficiency of the signal light at the intersection at Zia and St. Francis for the morning rush hour turning eastbound. It was explained that by closing the median at Galisteo Road and Zia Road, the eastbound dual left on Zia Road at the St. Francis Drive signalized intersection can be extended from approximately 100' to approximately 500', increasing storage capacity from 4 vehicles to 20 vehicles.

Chair Trujillo said that this has been a strong public safety concern.

SFFD Chief Litzenberg stated that they had spoken on this date regarding the concern and it is recommended that the access could be on the Zia side of Galisteo. We are comfortable with the resolution, overall it is somewhat safe.

Chair Trujillo asked if there are any DOT plans for reconstruction.

Mr. Romero stated that DOT has done Phase A corner study with different options. DOT is also doing a traffic study. The House Memorial at the State Legislature is asking the State to do a study to determine if the station should open.

Dr. Lewis asked if a study has been done on the number of accidents at this intersection.

Chief Rael answered that based on the SFPD observations that turn does cause a lot of accidents.

Councilor Rivera asked Chief Litzenberg regarding the electronic medical records program and if data was available.

Chief Litzenberg said that they would need to compile the data.

Mr. Romero said that they could compile a crash data report for the last three years and a compile crash diagram to show how many injuries and fatalities at that intersection.

*Mr. Mizrahi moved to approve the proposed resolution directing the Traffic Engineering Division to reconstruct the median at Zia Road and Galisteo Road so as to restrict left turn movements to and from Galisteo Road and to increase the length of Zia's Eastbound dual left turn lane at the St. Francis Drive signalized intersection, second by Mr. Harris, motion carried by unanimous voice vote.*