

City of Santa Fe, New Mexico

memo

TO: COUNCILOR DOMINGUEZ, CHAIRPERSON
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY 38
SUBJECT: STREET PERFORMER ADMINISTRATIVE HEARING
DATE: 12/5/14

BACKGROUND

City Code Section 23-8.7 requires the Finance Committee to hold a hearing when City staff has requested to revoke a street performer license. City staff is requesting an agenda item: "Action Item: Administrative Hearing on Thomas Dukette, Street Performer License."

HISTORY

The Notice of Violation Letter to Mr. Thomas Dukette (with attached criminal complaint) provides the explanation of the alleged violation of the street performer ordinance. These documents will be presented as exhibits at the hearing.

SUMMARY OF PROCESS

1. City staff (City Attorney's Office/SFPD officers) will present testimony and exhibits.
2. Mr. Dukette can cross examine city witnesses.
3. Mr. Dukette can present his own testimony and exhibits about the allegations.
4. City staff can cross examine Mr. Dukette's witnesses.
5. Committee members can ask questions of the witnesses.
6. Committee members can deliberate whether Mr. Dukette *has shown cause* why his license *should not* be revoked.

CODE CITATIONS

City Code Section 23-8.7(B)(4) states: "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."

City Code Section 23-8.7(B)(2) states: "If, at the hearing before the finance committee, the street performer fails to show cause why the business license fee should not be revoked, the finance committee shall issue a cease and desist order revoking the business license. Such cease and desist order shall prevent the street performer from performing on public property, for a period of one (1) year from the date of the hearing."

City Code Section 23-8.7(B)(5) states: "Any street performer aggrieved by the decision of the finance committee may submit to the governing body a written petition for appeal."



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

www.santafenm.gov

Javier M. Gonzales, Mayor

Councilors:

Peter N. Ives, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Signe I. Lindell, Dist. 1

Joseph M. Maestas, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Ronald S. Trujillo, Dist. 4

Bill Dimas, Dist. 4

November 25, 2014

Thomas Dukette
555 Onate Place
Santa Fe, NM 87505

Via Certified Mail
Article No. 7013 0600 0000 5925 2631
& First Class Mail

Thomas Dukette
559 Onate Place
Santa Fe, NM 87505

Via Certified Mail
Article No. 7013 0600 0000 5925 2648
& First Class Mail

Re: Street Performer Ordinance Violation

Dear Mr. Dukette:

City of Santa Fe officials received a copy of a criminal complaint filed against you for actions taken on November 6, 2014. We have enclosed a copy for your review. The purpose of this letter is to notify you of the municipal code violations. These violations are listed below:

VIOLATION(S)

The current use of the above activity is in violation of the following sections of the City of Santa Fe Municipal Code:

- SFCC 23-8.4D At all times street performers shall have available the performer's city-issued business license and proof of identification for review by the city.
- SFCC 23-8.5A: Street performers shall not block, or cause the blocking of any sidewalk, passageway, street, or entrance to a building.
- SFCC 23-8.5B: Street performers shall not exchange any type of food product or vegetation on public property.
- SFCC 23-8.5B: Street performers shall not sell goods or wares on public property at a fixed price except for audio or video recordings.

Santa Fe Police Department officials are prepared to testify that you have been given multiple warnings under the street performer ordinance. You have not corrected these violations.

You will have the opportunity to have a hearing on these allegations at the:

City Finance Committee Meeting
Monday, January 5, 2015
5:00 pm
City Council Chambers
200 Lincoln Avenue¹

You may appear (or may retain legal counsel) at the hearing and may present evidence and call witnesses to show cause why your street performer license should not be revoked. The City Attorney's Office and Police Department will also be able to present evidence and call witnesses.

The Finance Committee has the power to issue a cease and desist order revoking your street performer license if you fail to prove why your street performer license should not be revoked (or fail to attend the hearing). This cease and desist order shall prevent you from performing on public property for a period of one (1) year from the date of the hearing.

Please note, if you are aggrieved by the Finance Committee's decision, you may submit a written petition to the City Council for an appeal. The written petition for an appeal must be filed with the City Clerk's Office within thirty (30) days of the date of the Finance Committee's action and must specify the grounds for your appeal (i.e. where the Finance Committee erred in its decision).

As a street performer licensee, you are responsible for following City Code requirements. Please contact the City Attorney's Office (955-6303) with any questions on this matter.

Sincerely,


Teresita Garcia
Assistant Finance Director

enclosure

¹ If you do not cease in the above-stated activities within fifteen (15) days of receiving this notice, "the street performer shall surrender his business license to the [Santa Fe] finance director and the license shall be placed in suspension until a hearing is held before the finance committee."



CRIMINAL COMPLAINT

STATE OF NEW MEXICO

NO. 14-015597

SANTA FE COUNTY
SANTA FE CITY
IN THE MUNICIPAL COURT

-- VS --

STN #:
Arrest Date: 11/06/2014
Driver Lic.#: 039573873
Citation.#:
Arrest #:
Docket #:
Date Filed: 11/06/2014

Name: DUKETTE THOMAS
Address: 559 ONATE PLACE
City/Zip: SANTA FE NM 87505
D.O.B.: 11/05/1971
S.S.N.: 562-06-2083

CRIME:

(Common name of Offense or Offenses)

The undersigned, under penalty of perjury, complains and says that on or about 11/06/2014, in the County/City of SANTA FE, State of New Mexico, the above named Defendant(s) did:

Contrary to Section 16-13.1 NMSA 1978.

Offense, Desc: DISORDERLY CONDUCT

Contrary to Section 23-8.7 NMSA 1978.

Offense, Desc: CRIMINAL ENFORCEMENTS

ON THURSDAY, NOVEMBER 06, 2014 AT APPROXIMATELY 1032 HOURS I WAS IN FULL UNIFORM, DISPLAYING BADGE OF OFFICE, IN A MARKED UNIT WAS DISPATCHED TO 121 DON GASPAR (PASQUALS RESTAURANT) REFERENCE A MALE VENDING IN FRONT OF THE BUSINESS ON THE SIDEWALK. REPORTING PARTY DAVID CULSON ADVISED A MALE IS VENDING ON THE SIDEWALK IN FRONT OF THE BUSINESS AND IS NOT SURE IF HE SHOULD BE VENDING.

UPON ARRIVAL I NOTICED A TABLE WITH A BUCKET OF SAGE ON THE TABLE. I ALSO NOTICED A BROOM AND PINK YARN LAYING NEXT TO THE TABLE. I GOT OUT OF MY UNIT AND WAS UNABLE TO LOCATE THE OWNER OF THE TABLE AND THE MISCELLANEOUS BELONGINGS. I THEN GRABBED THE BELONGINGS AND PLACED THEM IN THE BACK SEAT OF MY UNIT DUE TO NO OWNER AND IT WAS BLOCKING THE SIDEWALK INTO THE BUSINESSES AND WALKING AREA. ONCE THE BELONGINGS WERE IN MY UNIT I ASKED A FEW MALES WHO WERE SITTING IN THE NEAR AREA WHO STUFF THIS WAS. THEY ADVISED ME IT WAS THOMAS DUKETTES. ONE MALE ADVISED ME THAT THOMAS DUKETTE SAW ME DRIVE UP AND HE RAN AWAY.

WHILE I LEFT THE AREA SANTA FE DISPATCH ADVISED A MALE IS CALLING FOR HIS STUFF. I ADVISED I WILL BE EN ROUTE TO THE LOCATION WHERE I FOUND IT. UNDERCOVER OFFICER ELIZABETH BREWER NOTICED THOMAS DUKETTE STANDING IN THE AREA WHERE THE TABLE WAS. I ADVISED OFFICER BREWER I WAS BACK EN ROUTE TO THAT LOCATION AND ONCE I TURNED NORTH ON DON GASPAR FROM ALAMEDA I NOTICED THOMAS HAD MORE SAGE ON HIS PERSON. I ALSO NOTICED THOMAS ASK A FEMALE IF SHE WANTED SAGE.

I HIT MY SIREN BUTTON ON MY UNIT TO GET THOMAS'S ATTENTION WHICH I DID AND HE WALKED OVER TO MY UNIT. I ADVISED THOMAS ABOUT THE SITUATION AT HAND AND WHY I TOOK HIS BELONGINGS. OFFICER BREWER ADVISED ME OVER THE RADIO THAT SHE NOTICED THOMAS ATTEMPTED TO SALE SAGE TO THREE DIFFERENT PEOPLE WITHOUT A BUSKERS PERMIT.

I ASKED THOMAS FOR HIS BUSKERS PERMIT AND HE ADVISED IT WAS NOT HIM. I ADVISED THOMAS HE HAS RECEIVED MULTIPLE WARNING FROM SGT. LAMB, SGT. MCCORD, OFFICER BREWER, AND MYSELF TO NOT SALE MERCHANDISE WITHOUT A PERMIT.

THOMAS DUKETTE WAS PLACED UNDER ARREST AND OFFICER BREWER CAME TO MY LOCATION AND TOOK HIS BELONGINGS TO HIS VEHICLE WHICH WAS ALSO ILLEGALLY PARKED.

WHILE EN ROUTE TO SANTA FE ADULT DETENTION CENTER THOMAS DUKETTE ADVISED ME HE HAS A TWO YEAR OLD CHILD AND THAT IS WHY HE IS ATTEMPTING TO SALE HIS MERCHANDISE.

THOMAS WAS TAKEN TO SANTA FE ADULT DETENTION CENTER WITHOUT INCIDENT.

CITY OF SANTA FE, NEW MEXICO STREET PERFORMER (BUSKER) ORDINANCE

23-8 STREET PERFORMERS ON PUBLIC PROPERTY.

23-8.1 Legislative Findings. The governing body of the city of Santa Fe finds that:

A. Street performers enhance the character of the city of Santa Fe; and

B. Street performers are professional entertainers whose livelihood comes from gratuities received; and

C. Street performers have a right to perform on public property; and

D. Street performers gather crowds who are entertained by their widely varied and creative performances; and

E. At some locations that street performers choose to entertain there is not enough room for a crowd, therefore, public safety matters occur because sidewalks, passageways, streets or entrances to buildings are blocked; and

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

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

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

(Ord. #2009-50, §2)

23-8.2 Purpose. The purpose of this section is to ensure the ability of street performers to perform in public spaces and to promote harmony among street performers, local businesses, permitted event sponsors, residents and visitors to Santa Fe by:

A. Addressing public safety concerns; and

B. Balancing the interests of the street performers with those of the local businesses, permitted event sponsor, residents and visitors to Santa Fe; and

C. Establishing regulation and licensing standards for street performers.

(Ord. #2009-50, §3)

23-8.3 Definitions. As used in this section:

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

Street performer means an individual who performs, as defined herein, on public property within the city of Santa Fe.

(Ord. #2009-50, §4)

23-8.4 Business License Required.

A. Street performers shall be required to obtain a city

business license in accordance with Section 18-1 SFCC 1987, which may be applied for each calendar year. The business license shall expressly state the type of performance the street performer will be performing.

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

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

D. At all times street performers shall have available the performer's city-issued business license and proof of identification for review by the city.

(Ord. #2009-50, §5, Ord. #2014-19, §1)

23-8.5 Regulations. Street performers may perform on public property within the city of Santa Fe but shall comply with the following regulations.

A. Street performers shall not block, or cause the blocking of any sidewalk, passageway, street, or entrance to a building.

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

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

D. Street performers shall not infringe on events for which a city permit has been issued so as not to detract from the stated purpose of the permit including, but not limited to, Indian Market, Spanish Market, Fiesta Arts and Crafts, Fiesta and midday or evening performances at the bandstand on the Plaza. Any performance at such events shall only be with the written permission of the sponsor.

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

F. Street performers shall stay at least fifty feet (50') away from other street performers, Plaza Park artist/artisan vendors and Plaza pushcart vendors.

G. Street performers shall not be plainly audible fifty feet (50') away from the performance site. A street performer may use amplification, but within the Plaza boundaries may only do so between the hours of 1:00 p.m. and 3:00 p.m. daily. A street performer may not use public power sources or portable generators.

H. Street performers shall not remain at any one location longer than two (2) hours and then shall move at least one hundred feet (100') away from that location and shall not return to that location for two (2) hours. If the location is within the Plaza boundaries, the street performer shall move off the Plaza.

I. Street performers shall not perform on the Plaza



Agenda

FINANCE COMMITTEE MEETING
CITY COUNCIL CHAMBERS
JANUARY 5, 2015 – 5:00 P.M.

38. Administrative Hearing on Staff's Request to Revoke the Street Performer License Issued to Thomas Dukette. (Zachary Shandler)

A. Action by Finance Committee on Whether Mr. Dukette has Shown Cause Why His License Should Not be Revoked

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3839. MATTERS FROM THE COMMITTEE

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3940. ADJOURN

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520 five (5) working days prior to meeting date.