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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2014-10

INTRODUCED BY:

Councilor Chris Calvert

AN ORDINANCE

RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 23-8.1 SFCC 1987 (being Ord. #2009-50, §2) is amended to read:

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
- 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

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 [~~those~~] 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 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY