



Agenda

CITY CLERK'S OFFICE

DATE 2/12/14 TIME 1:18 pm

BY Shannon Cantu

[Signature]

PUBLIC SAFETY COMMITTEE
Tuesday, February 18, 2014
4:00 PM
City Council Chambers
200 Lincoln Avenue, Santa Fe, NM 87501

1. Roll Call
2. Approval of agenda
3. Approval of Thursday, January 23, 2014 minutes
4. Old business:
 - A. NONE
5. New business:
 - A. Mid Year Adjustment-Decrease from "cash" to increase "Detention Center" line item for jail costs (Deputy Police Chief John Schaerfl)
 - B. Proposed ordinance relating to street performers on public property; amending section 23-8 SFCC 1987 (Councilor Calvert, Zachary Shandler)
 - 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)
6. Matters from Municipal Court
7. Matters from Police Chief Raymond Rael
8. Matters from Fire Chief Erik Litzenberg
9. Matters from Committee Members
10. Communications from the Floor
11. Adjournment

For information regarding the agenda, you can call Shannon Cantu at 955-5074. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

**PUBLIC SAFETY COMMITTEE
INDEX
February 18, 2014**

Cover Sheet Call to Order and Roll Call	The Public Safety Committee meeting was called to order at 4:00 pm by Councilor Ron Trujillo, Chair. Roll call constitutes a quorum.	Page 1-2
Approval of Agenda	Staff: No Changes Mr. Harris moved for approval of the Agenda as presented, second by Mr. Mizrahi, motion carried by unanimous voice vote.	Page 2
Approval of January 23, 2014 Minutes	No Corrections. Mr. Mizrahi moved to approve the minutes of January 23 2014 as presented, second by Dr. Mier, motion carried by unanimous voice vote.	Page 2
Old Business	None	
New Business		Page 3 - 10
1. Mid Year Adjustment-Decrease from "cash" to increase "Detention Center" line item for jail costs (Nancy Jimenez)	<i>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.</i>	
2. Proposed ordinance relating to street performers on public property; amending section 23-8 SFCC 1987 (Councilor Calvert, Zachary Shandler)	<i>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.</i>	
3. 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)	<i>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.</i>	

Matters from Municipal Court	Report Included in Packet	Page 11
Matters from Police Chief Ray Rael	Informational Recruiting Commercial was Viewed	Page 11
Matters from Fire Chief Erik Litzenberg	Informational	Page 11
Matters from Committee Members	Informational	Page 11
Matters from the Floor	None	Page 11
Adjournment and Signature Page	There being no further business to come before the Public Safety Committee, the meeting was adjourned at 5:45 pm.	Page 11

PUBLIC SAFETY COMMITTEE
Tuesday, February 18, 2014
4:00 PM – 5:45 PM
City Council Chambers
200 Lincoln Avenue, Santa Fe, NM 87501

MINUTES

1. Call to Order

The Public Safety Committee meeting was called to order at 4:00 pm by Councilor Ron Trujillo, Chair. Roll call constitutes a quorum.

Roll Call

Present

Councilor Ron Trujillo
Councilor Chris Rivera
Dr. Mike Mier
Mr. Herbert Harris
Mr. Peter Mizrahi
Dr. Nancy Owen Lewis

Not Present

Mike Bowen, Excused

Others Present

Chief Ray Rael, SFPD
Assistant Chief Jan Snyder, SFPD
Nancy L. Jimenez, Police Fiscal Administrator
Councilor Chris Calvert
John Romero, Traffic Engineer
Officer Elizabeth Brewer, Santa Fe Police Department
Zachary Shandler, City Attorney's Office
Anna Serrano for Fran Lucero, Stenographer

Ben Chavez
Michael Colms
John Dressman, Downtown Merchants Association

2. Approval of Agenda

Staff: No Changes

Mr. Harris moved for approval of the Agenda as presented, second by Mr. Mizrahi, motion carried by unanimous voice vote.

3. Approval of Thursday, January 23, 2014 minutes
No Corrections.

Mr. Mizrahi moved to approve the minutes of January 23 2014 as presented, second by Dr. Mier, motion carried by unanimous voice vote.

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 28th 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 is it somewhat safe.

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

Mr. Romero started 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.

6. Matters from Municipal Court
Report on file.

7. Matters from Police Chief Raymond Rael
Report provided in meeting packet.

There was an overall decrease in robberies in the city. Chief Rael said they are working hard on the recruiting commercial on Channel 13 and 2. It will be aired 40 times a month until the end of the year.

(Recruiting commercial was viewed)

8. Matters from Fire Chief Erik Litzenberg

Chief Litzenberg stated that they will be graduating 14 fire fighters and it will take place at the DPS auditorium. They will have 2 individuals in the apprenticeship program starting in mid-March. They continue the process of hiring seasonal staff, 3 groups of 10 which are more than last year.

Councilor Rivera asked if the Atalaya crew stay at Fire station 9. Chief Litzenberg stated that they do but they are not there in the evenings.

9. Matters from Committee Members

Councilor Trujillo expressed his thanks to the members of the Public Safety as this would be his last meeting.

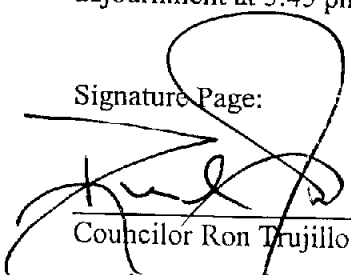
Councilor Rivera stated that the new Mayor would discuss committee placement and announced there would not be a Public Safety Committee meeting next month.

10. Communications from the Floor
None

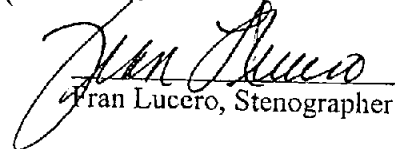
11. Adjournment

There being no further business to come before the Public Safety Committee, the Chair called for adjournment at 5:45 pm.

Signature Page:



Councilor Ron Trujillo



Fran Lucero, Stenographer

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

BILL NO. 2014-__

Street Performers

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: February 11, 2014

ATTACHMENTS: Amendment
Bill
FIR

Exhibit A

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

Mayor and Members of the City Council:

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

1. 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"

Respectfully submitted,

Councilor Chris Calvert

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2014-____

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 [~~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. ~~By 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;

1 (b) whether there are past due license fees;

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

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

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

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

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

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

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

25 (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:

16 
17 _____

18 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY