

ORDINANCE O-08-13

AMENDMENT TO CHAPTER 14 OF THE CODE OF ORDINANCES OF THE TOWN OF WAYNESVILLE

WHEREAS, the Board of Aldermen of the Town of Waynesville finds that street performers provide a public amenity that enhances the character of the town and seeks to encourage such performances in a manner consistent with the overall public interest.

The Board of Aldermen also recognizes that street performers seek to and do draw crowds to their performances, which can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through crosswalks and impeding the response time of safety personnel. It can also impact access to and egress from businesses.

Cognizant that street performers are engaged in First Amendment activities, this Article imposes reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes or the ability of businesses to operate and conduct their business.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, North Carolina that Chapter 14 is hereby amended to read as follows by adding Article V:

CHAPTER 14: Businesses ARTICLE V. Street Performers

Sec. 14 – 126. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Street Performer means an individual who performs in a public area, for the purpose of providing public entertainment.

Perform or Performance means audible or visual 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.

Public Area means sidewalks, parks, playgrounds, and all other public spaces located within the town.

Sec 14 – 127. License required; procedure for issuance.

- (a) A license issued by the town shall be required of all street performers working within the town. Licenses are valid from July 1 to June 30. The fee shall be set from time to time by the board of aldermen, and is nonrefundable. Every performer within a single group is required to meet the licensing requirements of this ordinance.
- (b) Application for a license to become a street performer in the town shall include, at a minimum, the following information and requirements:
 - (1) The name, permanent address, phone number, and proof of the identity of the applicant. Acceptable forms of identification shall include, but not be limited to, a driver's license, student identification card, or passport.
 - (2) A detailed description of the nature of the act to be performed;
 - (3) A detailed description of any instrument(s) or prop(s) which will be used by the performer;
 - (4) Two (2) two inch by two inch (2x2) head shot color photos of the applicant. One shall be kept with the application, and the other included on the final license.
- (c) Before any license shall be issued under this section, the applicant shall submit to a criminal background history check which shall be reviewed by the chief of police or his designee to determine eligibility of the applicant. No applicant shall be eligible for issuance or renewal of a license under this section if the applicant has been convicted of two (2) or more offenses within a period of five (5) years preceding the application where each offense involved an assault, sex offense, communicating a threat, illegal use of a weapon or other act of violence or attempted violence.
- (d) Upon receipt of a signed complete application for a performance license, the town manager or his designee shall approve the permit within five business days, unless one of the following findings is made:
 - (1) The applicant knowingly made a false, misleading or fraudulent statement of fact to the town in the application process;
 - (2) The application does not contain the information required by this Article;
 - (3) The applicant has not satisfied the requirements of this Article.
- (e) A street performer license is not assignable or transferable.
- (f) Licenses must be displayed at all times during performances.

Sec. 14 – 128. Locations where street performers are allowed.

- (a) Street performers may only perform at specified areas of public property within Waynesville which the town manager or his designee determines to be reasonably suitable to conduct street performances without adversely impacting the community as described herein.
- (b) Public areas for street performance are available on a first-come, first-serve basis each day. No street performer shall claim a greater right to perform at any location over a street performer who arrives first at the same location.

- (c) The town manager or his designee may solicit opinions from any party concerning the suitability of allowing street performances at any area of public property in Waynesville. The town manager shall assess such information thereby developed and may exclude or include additional sites for good cause related to public safety, public health, public peace, or the peaceful enjoyment of nearby premises. Any party may petition the board of aldermen for inclusion or exclusion of a particular public area from the list of areas where street performances are permitted.
- (d) No street performer may perform within 50 feet of another street performer; however, this provision shall not preclude street performers who are performing together from performing in close proximity to one another.
- (e) *Excluded areas.* Performances are not permitted within 50 feet of any structure which is used as a school, library, hospital, church, funeral home, or courthouse. No performance may occur within 50 feet of the property line of a cemetery. No performance shall occur within an encroachment area for dining on a public sidewalk. No performance activity shall interfere with or impede the flow of pedestrian traffic at a crosswalk, building entrance, private patio, or curb cut, or entrance into an encroachment area for dining. No performance may occur within 100 feet of any special event authorized by the town unless the performer has been approved by the event organizer. Street performers shall not perform on private property without written permission of the property owner. Street performers are required to keep the writing granting such permission on their person during any performance on private property. Notwithstanding, street performers shall not conduct any performances on property used for any residential purpose.

Sec. 14 – 129. Cooperative performances; limit on number of street performers.

Any street performance may be performed cooperatively by a group of no more than three (3) total performers, unless a specific public area has been determined by the town manager to be large enough to accommodate groups larger than three.

Sec. 14 – 130. Regulations.

- (a) Street performers shall not block, or cause the blocking of any sidewalk, passageway, street, or any ingress or egress to any building, structure, driveway or other passage. Sidewalks must maintain a minimum of four feet of pedestrian passageway during a performance.
- (b) Street performances are not permitted at any public area not presently identified on the list maintained by the town, unless a performer has been contracted by the town or the Downtown Waynesville Association to perform on a specific day in a specific location.
- (c) Street performers shall not infringe or detract from the purpose of special events, temporary gatherings or vendor activities for which a Town permit has been issued to another party.
- (d) Street performers shall not remain at one designated public area for a total duration of more than four (4) hours during any one-day period, unless contracted by the town or the Downtown Waynesville Association to perform on a specific day in a specific location.

Musicians may not repeat the same set within a single one-day period. When a street performer leaves a location, the street performer shall not return to that location for at least one (1) hour. No instruments, props, merchandise, or other items may be left unattended.

- (e) Street performances are not permitted before 11:00 a.m. nor after 9:00 p.m.
- (f) No street performer on public property shall connect to, or cause to be connected to, any source of electrical power or water on public or nearby private property as part of preparation to perform or actual performance. No performer shall use any generator or wet cell battery with removable fill caps. This provision shall not be construed to forbid use of instruments or items with self-contained and secure electrical power supply such as batteries, or the use of a container of potable water for drinking.
- (g) Street performers may accept contributions of money or property at their performance in exchange for their artistic performance as allowed in this section, and may sell audio or video recordings of their own artistic works. Street performers shall not sell any other goods, wares, works of art or conduct any other service on public property.
- (h) No performer shall solicit donations by spoken word or gesture. However, donations may be received in any receptacle, such as an open musical instrument case, box, or hat, and said action will not be in violation of Section 44-1, begging. Receptacles may only be open during the time which a performer is actively performing or setting up or taking down for a performance.
- (i) Street performers may display one (1) sign no larger than eighteen (18) inches by eighteen (18) inches advertising the sale of their own artistic work and asking for compensation in exchange for their live performance. Said sign may be placed on a prop or sandwich board-type stand in a location no closer than three (3) feet from any curb and not in any location which impedes any foot traffic, parking or persons entering or exiting any motor vehicle. Street performers shall remove such signs from any location at the conclusion of their performance. No sign, handbill, flyer or other advertisement shall be left at any location after the conclusion of a performance.
- (j) No street performer shall make any use in any way of fire, sharp instruments or objects, spray paint, aerosols, firearms (real or simulated), dangerous weapons or any form of harmful chemicals during a street performance.
- (k) Street performers shall not utilize any speaker, microphone, or mechanical amplification device. Street performers shall not commit any violation of chapter 26, article III, noise.
- (l) While conducting a street performance, street performers shall not use language or gesture, or display any matter which:
 - (1) Is obscene as prohibited by G.S. § 14-190.1;
 - (2) Incites or urges riot as prohibited by G.S. § 14-288.2; or
 - (3) Is defamatory, insulting or constitutes a communication which tends to inflict injury or incite an immediate breach of the peace.

Sec. 14 – 131. Enforcement.

- (a) When directed by any Town official, street performers shall promptly comply with the directions to cease or relocate street performances when the Town official determines that such action is necessary in response to a complaint by a patron or business operator that the street performance interferes with any private business.
- (b) Any person who fails or refuses to comply with the regulations contained in this section, or to produce a license issued herein upon request of a Town official, shall be guilty of a class 3 misdemeanor. Except as otherwise provided herein, a police officer shall issue a citation for a violation of this section.
 - (1) A police officer may arrest a street performer or performers for a violation of section 14-101, interference with the enforcement activities of the officer, or any other act which causes an imminent danger to the public health or safety.
- (c) *Revocation; suspension.* Additionally, the town may revoke or suspend a license upon the commission of a second violation of either this Article or of permit conditions within a six-month period. A performer's permit may be suspended for up to four (4) months. If the permit is suspended, no new permit may be issued during the period of suspension. Any revocation of a performer's permit shall be for six (6) months unless the performer previously had a permit revoked, in which case the permit shall be revoked for twelve (12) months.

Sec. 14 – 132 Exemptions.

This article shall not apply to:

- (a) Activities which are a part of a film or television production.
- (b) Any person engaged in a special event as that term is defined in section 14-82 who has the express authorization of the event organizer.

Adopted this 27th day of August, 2013.

TOWN OF WAYNESVILLE

ATTEST:

Gavin A. Brown
Mayor

Eddie Ward
Deputy Town Clerk

APPROVED AS TO FORM:

Woodrow H. Griffin
Town Attorney

Marcia D. Onieal
Town Manager