

Ordinance No. 10436-16

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
INDIANA, TO ADDRESS BUSKERS AND SIDEWALK PERFORMERS BY
REPEALING CHAPTER 4, ARTICLE 4, SECTION 4-21 OF THE SOUTH BEND
MUNICIPAL CODE, RE-CODIFYING AND AMENDING IT WITHIN A NEW
ARTICLE 13 OF CHAPTER 14, NEW SECTIONS 14-123 THROUGH 14-126 OF THE
MUNICIPAL CODE, AND FURTHER AMENDING CHAPTER 13, ARTICLE 12,
SECTION 13-26 CONCERNING SOLICITATIONS**

STATEMENT OF PURPOSE AND INTENT

On July 28, 2014 the South Bend Common Council passed Ordinance No. 10318-14 which directed that a full and complete review be undertaken of the City of South Bend's pilot program busker ordinance, Chapter 4, Article 4, Section 4-21 of the *Municipal Code of the City of South Bend, Indiana (Municipal Code)* which was originally enacted December 9, 2013 Ordinance No. (10274-13).

The South Bend Common Council and the City Administration have completed their review of the busker ordinance and the busking activity which has occurred in South Bend pursuant to that ordinance since its effective date. They have determined that street entertainers should be encouraged and promoted in the Central Business and Entertainment Area of South Bend; that the City continues to have a substantial interest in the safety of the public and of street performers in the public right of way, and also in protecting the public from aggressive, harassing activity.

However, in achieving these goals of maintaining a safe environment to maximize social, business, cultural and recreational activities, while eliminating nuisance activity which could harm the social environment, it is desirable to modify the existing legislation affecting buskers and solicitation in the South Bend Municipal Code.

As a pilot program, the original ordinance was limited to the Central Business and Entertainment area identified as Exhibit A-1 in the original ordinance (10274-13). At this time that area remains the most heavily travelled pedestrian portion of the City, and the pilot program review did not suggest a present need to expand busking activity into other areas, although this may be desirable in the future.

The most significant changes in the prior busker program under this ordinance include the elimination of the licensing process, and an exemption in the regulation of solicitation under Chapter 13, Article 2, Section 13-26 of the *Municipal Code* for those buskers who solicit money for their performances.

Because buskers and sidewalk performers were previously required to obtain permits, which process is governed generally under Chapter 4 of the *Municipal Code*, elimination of the permit requirement means that regulation of buskers and street performers must be located in another Chapter of the *Municipal Code*. Chapter 14 of the *Municipal Code* governs “Specific Public Safety Regulations,” and, accordingly, a new Article and Section of that Chapter have been added to address regulations for buskers and street performers, specifically, Chapter 14, Article 13 (new), Sections 14-123 through 126. The regulations under this new Article 13, Sections 123-126 of Chapter 14 are similar to prior Chapter 4, Article 4, Section 4-21 with the following changes:

(1) Clarification has been made to permit busking on days that special events occur in the Central Business and Entertainment Area (CBEA) during hours and places within the CBEA outside the time and location of the event.

(2) The fine for a second offense has been reduced from \$250.00 to \$200.00.

(3) A busker has a duty to provide true and accurate self-identification information to a person authorized to enforce the ordinance when that person has probable cause to believe that a violation of the ordinance has occurred.

(4) The distance requirements for proximity between other buskers and between buskers and buildings, driveways, curb cuts, outdoor eating areas and similar places or structures has been clarified and the linear distances are recommendations, not mandates.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA as follows:

Section I. Chapter 4, Article 4, Section 4-21 of the South Bend Municipal Code addressing Buskers and Sidewalk Performers is hereby repealed.

Section II. Former Chapter 4, Article 4, Section 4-21 is re-codified and amended at Chapter 14, by adding a new Article 13, comprised of Sections 14-123 through 126, to read in its entirety as follows:

ARTICLE 13. Buskers and Sidewalk Performers Regulations.

Sec. 14-123. Definitions

For purposes of this Section, the following definitions shall apply:

- (a) *Busker(s)* means and includes person(s) who wish to perform on public sidewalks as entertainer(s), including but not limited to performing or entertaining through music, dance, mime, pantomime, theater, acting, puppetry, and similar artistic expression.
- (b) *Central Business and Entertainment Area* means the area depicted in the attached Exhibit A-1.

- (c) ~~City shall mean City of South Bend, through its Office of the City Controller in the Department of Administration and Finance.~~
- (d) *Designated locations* shall mean areas on public sidewalks located within the Central Business and Entertainment Area, except those areas which have been excluded by the Board of Public Works for events approved for locations within this area during the scheduled hours for such events, and any other public sidewalk locations excluded by the Director of the Department of Public Works or his/her designee due to public safety concerns.
- (e) *Perform* shall mean forms of entertainment which do not violate the noise regulations set forth in Sections 3-9, and 13-57 of the *South Bend Municipal Code*.
- (f) *Sidewalk Performer(s)* shall have the same meaning as buskers(s).

~~(b) Permit Required No person who wishes to perform as a busker or sidewalk performer in the Central Business and Entertainment Area shall do so without a permit required by this Section from the Office of the City Controller Sidewalk Performer(s) shall have the same meaning as busker(s).~~

~~(c) Application: Any person wishing to perform as a busker or sidewalk performer must file a completed application through the Office of the City Controller. Said application shall require:~~

- ~~(1) Name, address, cell phone number and email of person(s) wishing to perform,~~
- ~~(2) Provide proof of identity by a government or school issued identification card or license,~~
- ~~(3) If a minor (under the age of 18 years of age) consent of parent or legal guardian,~~
- ~~(4) Description of form of entertainment the application wishes to perform, and~~
- ~~(5) Signature of the application that he/she acknowledges receiving a copy of the governing regulations and agrees to abide by such regulations if his/her application is approved.~~

Sec. 14-124. General Rules and Conditions for Buskers.

~~(b) Permit Conditions: General Rules and Conditions for Buskers: All persons who are to be issued a permit under this section perform as buskers shall:~~

- ~~(1) Be authorized to perform for the calendar year for which the permit is issued, except on dates which are excluded.~~
- ~~(2) Be authorized to perform at a designated location on a first come first serve basis.~~

- ~~(a)-(3)~~ Be authorized to perform in the Central Business and Entertainment Area on a first come first serve basis Mondays through Thursdays from 8:00 a.m. to 9:00 p.m. and from 8:00 a.m. to 11:00 p.m. on Fridays through Sundays, except on those dates and at those times and places which are specifically excluded under subpart (c) of this Section.
- ~~(4)~~ Be required to pay the permit fee of twenty dollars (\$20.00) for said calendar year.
- ~~(5)~~ Be required to prominently display the permit issued while performing.
- (b) ~~(6)~~ Not be required to get a permit under *South Bend Municipal Code* § 13-57 (d) "Permit for playing noncommercial music in public places".
- (c) ~~(7)~~ Not block the passage of the public through a public area on the sidewalk in order to maintain public order and convenience, with blockage or obstruction to such public way being dispersed by police upon complaint to allow passage of the public.
- (d) ~~(8)~~ Not offer for sale any merchandise at any designated location.
- (e) ~~(9)~~ Not use electrical and extension cords of any kind in light of public safety concerns; but may use battery-powered microphones and/or amplified speaker(s) so long as such equipment is used in compliance with *South Bend Municipal Code* § 3-8 addressing "Advertising with music for commercial purposes prohibited" and *South Bend Municipal Code* § 3-57 addressing "Unreasonable noise".
- (f) ~~(10)~~ May accept monetary donations, while performing with such donations not being considered as a prohibited act under *South Bend Municipal Code* § 13-26 so long as the busker has registered under subpart (d) of this Section and if solicitation is not done in an aggressive manner which recklessly interferes with pedestrian safety and/or vehicular traffic.
- (g) ~~(11)~~ Not be performing within such distance of any street corner, marked pedestrian crosswalk, entrance to any building, driveway, curb cut, outdoor eating area, emergency exit, kiosk, or ATM machine, which is reasonably likely to cause obstruction or blockage of the free and safe movement of pedestrians or which would reasonably likely cause the site vision needed for the safety of motor vehicle drivers to be blocked. A distance of twenty feet is recommended between a busker/street performer and the foregoing specified locations.

- (h) (12) Not perform within such a distance from another busker or sidewalk performer so as to reasonably likely cause congestion of spectators which would impede emergency medical, law enforcement or safety officers from access to the area or which would make it unreasonably difficult for pedestrians to freely and safely pass through the area. A distance of forty feet between each busker/street performer is recommended.
- (i) (13) Not have any equipment or items used for performing which obstructs or blocks the free and safe movement of pedestrians or blocks the site vision for the safety of motor vehicle drivers; with all stages and platforms being prohibited. No equipment or items used for performing shall be left unattended by the busker or sidewalk performer.
- (j) Provide information necessary to truly and correctly identify the busker or street performer to any and all persons authorized to enforce this Section when the authorized person has probable cause to believe that a violation of the ordinance has occurred.
- ~~(d) Permit Conditions: All persons who are to be issued a permit under this section shall:~~
- ~~(1) Be authorized to perform for the calendar year for which the permit is issued, except on dates which are excluded.~~
 - ~~(2) Be authorized to perform at a designated location on a first come first serve basis.~~
 - ~~(3) Be authorized to perform on Mondays through Thursdays from 8:00 a.m. to 9:00 p.m. and from 8:00 a.m. to 11:00 p.m. on Friday through Sundays.~~
 - ~~(4) Be required to pay the permit fee of twenty dollars (\$20.00) for said calendar year.~~
 - ~~(5) Be required to prominently display the permit issued while performing.~~
 - ~~(6) Not be required to get a permit under *South Bend Municipal Code* § 13-57 (d) "Permit for playing noncommercial music in public places".~~
 - ~~(7) Not block the passage of the public through a public area on the sidewalk in order to maintain public order and convenience, with blockage or obstruction to such public way being dispersed by police upon complaint to allow passage of the public.~~
 - ~~(8) Not offer for sale any merchandise at any designated location.~~

- (9) ~~Not use electrical and extension cords of any kind in light of public safety concerns; but may use battery-powered microphones and/or amplified speaker(s) so long as such equipment is used in compliance with *South Bend Municipal Code* § 3-8 addressing “Advertising with music for commercial purposes prohibited” and *South Bend Municipal Code* § 3-57 addressing “Unreasonable noise”.~~
- (10) ~~May accept monetary donations while performing with such donations not being considered as a prohibited act under *South Bend Municipal Code* § 13-26 so long as the solicitation is not done in an aggressive manner which recklessly interferes with pedestrian safety and/or vehicular traffic.~~
- (11) ~~Not be performing within twenty feet (20’) of any street corner, marked pedestrian crosswalk, entrance to any building, driveway, curb cut, outdoor eating area, emergency exit in order to not obstruct or block the free and safe movement of pedestrians or block the site vision needed for the safety of motor vehicle drivers.~~
- (12) ~~Not perform less than fifty feet (50’) from another busker or sidewalk performer.~~
- (13) ~~Not have any equipment or items used for performing which obstructs or blocks the free and safe movement of pedestrians or blocks the site vision for the safety of motor vehicle drivers; with all stages and platforms being prohibited. No equipment or items used for performing shall be left unattended by the busker or sidewalk performer.~~

~~(e) — Permit Non-Transferable: All permits issued under this section are non-transferable.~~

Sec. 14-125. Days Excluded from Performing.

~~(d)(f) Days Excluded from Performing:~~ Annual special events taking place in the Central Business and Entertainment Area and other events requiring the use of sidewalks in this Area ~~to~~ shall take precedence over buskers and sidewalk performers. The Clerk to the Board of Public Works shall be responsible for ~~notifying all persons seeking a permit under this section~~ maintaining a list of such annual and other special event dates, which shall also be posted on the City’s website within and at least seventy-two (72) hours’ notice ~~of new events which are approved requiring the use of such designated areas prior to any such event.~~ Buskers and sidewalk performers shall not perform on those days during the hours when, and at the locations where, the designated special event(s) takes place unless they have been authorized to perform by the event organizer. Buskers and sidewalk performers may perform at regular hours during the special event day in those portions of the Central Business and Entertainment area which are not part of the designated area of the special event.

~~(e)(g) Refusal to Issue Permit; Suspension or Revocation of Permit: The City may refuse to issue a permit, and any permit issued under this Section may be suspended or revoked. Such actions shall be governed by Section 4-16 of the South Bend Municipal Code.~~

Sec. 14.126. Penalties.

~~(e)(f)(h) Penalties:~~ Any person violating any provisions of this Section shall be issued an ordinance violation citation. Penalties shall be one hundred dollars (\$100.00) for the first violation; two hundred ~~fifty~~ dollars (~~\$25~~200.00) for the second violation and five hundred dollars (\$500.00) for all violations thereafter. Payment of penalties up to two hundred ~~fifty~~ (~~\$25~~200.00) shall be made through the Ordinance Violations Bureau. Failure to make payment within thirty (30) days of the issuance of the citation shall result in a late fee of an additional fifty dollars (\$50.00) for every thirty (30) days it remains unpaid.

~~(i) — Any person who is issued a permit under this Section in 2013, said permit shall also be valid throughout the 2014 calendar year.~~

Section III. Chapter 13, Article 12, Section 13-26 of the South Bend Municipal Code be and hereby is amended to read as follows:

Sec. 13-26. Prohibited acts.

- (a) In light of the City's duty to provide residents and visitors to the downtown of the city with a safe environment where social, business, cultural, and recreational opportunities can be maximized while eliminating nuisance activities which negatively affect such interactions, the following regulation shall be in full force and effect:
- (1) Except as otherwise provided in section 13-26(a) (2) and section 13-26(a) (3) below, Solicitation is prohibited in the Central Business and Entertainment Area (CBEA).
 - (2) Solicitation of immediate donation of money or other thing of value or the sale of goods or services that (i) is performed by a person who is a "licensee" (as defined in section 4-2(c) of this Code) under section 4-55, Charitable solicitations, busker or street entertainment under Chapter 14, Article 13 of this Code and (ii) consists of actions permissible under the regulations set forth in section 4-55, Charitable solicitations, and (iii) is fully compliant with the provisions of section 13-26(b), shall be excluded from the prohibition set forth in section 13-26(a)(1) above.
 - (3) Solicitation of the sale of goods or services that (i) is performed by a person who is a "licensee" (as defined in section 4-2(c) of this Code) under one or more of the sections of this Code listed below, and (ii) consists of actions permissible under the regulations set forth therein, and (iii) is fully compliant with the provisions of section 13-26(b), shall be excluded from the prohibition set forth in section 13-26(a)(1) above:
 - a. Section 4-25: Food vending vehicles,
 - b. Section 4-43: Peddlers and canvassers,
 - c. Section 4-60: Transient merchants.

(b) Because solicitation in an aggressive manner creates a reckless interference with pedestrians and vehicular traffic in public places, the following regulations shall be in full force and effect:

- (1) Solicitation in an aggressive manner is prohibited in any public place.
- (2) Solicitation in an aggressive manner is prohibited within twenty (20) feet of any Automated teller machine (ATM).
- (3) Solicitation in an aggressive manner is prohibited within twenty (20) feet of any pay telephone.
- (4) Solicitation in an aggressive manner from an operator or occupant of a motor vehicle located in any public place is prohibited.

Section IV. *Severability Clause:* If any subsection, sentence, clause, phrase or word of this ordinance is declared to be unconstitutional or otherwise invalid by a Court of proper jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section V. This ordinance shall be in full force and effect from and after its passage by the Common Council, approval by the Mayor, and legal publication.

Tim Scott, President of the Common Council

Passed on April 11, 2016 by the Common Council of the City of South Bend, Indiana.

Presented to approved and signed by Mayor Peter Buttigieg on April 12, 2016.

Approved: Tim Scott, President of the Common Council

Kareemah Fowler, City Clerk