

OCA No.: 110000

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Ordinance No. 50-440

AN ORDINANCE AMENDING SECTIONS 10.36.020, 10.36.030, 10.36.040 AND 10.36.050 AND CREATING SECTION 10.36.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO STREET PERFORMERS AND RESTRICTIONS THEREON, AND REPEALING THE ORIGINALS OF SAID AMENDED SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 10.36.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**“Definitions.**

For the purposes of this chapter, the following words or phrases shall have the meanings stated:

- (a) Charge. To require someone to pay a fee or to set, negotiate or establish a fee for a performance. Seeking voluntary contributions through passing around a hat, leaving open an instrument case or other receptacle, or soliciting donations of any amount after a performance is not a charge.
- (b) Entrance. Any point of entry into or egress from to a structure, whether by vehicle or pedestrian; or any point of entry into or egress from a defined, private, outdoor space, such as a permitted under City Code section 10.04.131 and

amendments thereto. The entrance shall include the outer edge of all doors, vestibules, driveways and emergency exits.

- (c) Handicrafts. Objects made either by hand or with the help of devices used to shape or produce the objects through such methods as weaving, carving, stitching, sewing, lacing, and beading, including, but not limited to, objects such as jewelry, pottery, silver work, leather goods, and trinkets. Handicrafts are not likely to communicate a message, idea, or concept to others, are often mass-produced or produced with limited variation, and often have functional utility apart from any communicative value they might have. Handicrafts do not include visual art.
- (d) Perform. To engage in the following activities: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, acts of illusion, juggling, reciting, creating visual art in its entirety, or similar expressive conduct.  
  
"Perform" shall not include: the provision of personal services such as hair weaving or massage; the application of substances to others' skin, including, but not limited to, paints, dyes and inks; the creation of visual art which is mass produced or produced with limited variation or other activity that is primarily the creation handicrafts.
- (e) Performer or Street Performer. An individual who performs in a public area, for the purpose of providing public entertainment or who creates visual art in its entirety, or engages in similar expressive conduct for the pleasure of passers-by.
- (f) Public Areas. Sidewalks, parks, and all other outdoor, public spaces located in the City. These areas are described in judicial opinions as traditional public fora.

- (g) Residence. Any interior space within a structure that is designed for or actually used as a dwelling, whether or not currently occupied.
- (h) Sculpture. A three dimensional work of art which is created through shaping solid material such as wood, stone, clay, plastic or metal by carving, modeling, or similar methods.
- (i) Street. The entire width between the curb lines or the lateral lines of a roadway or every way publicly maintained when part thereof is open to the use of the public for purposes of vehicular traffic. As used in this chapter, the word "street" shall include any public road, highway, street, avenue, thoroughfare, trafficway, boulevard, alley, lane and any other public way for vehicular traffic, unless the context clearly indicates otherwise.
- (j) Visual Art. Drawings, paintings, and constructions applied to paper, cardboard, canvas, or other similar medium through the use of brush, pastel, crayon, pencil or other similar object, and sculptures.”

SECTION 2. Section 10.36.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**“Performance restrictions.**

- (a) No performer shall perform:
  - (1) Within 10 feet of any bus stop, or within the property of the Wichita Transit Center;
  - (2) Within 10 feet of any marked pedestrian crosswalk or any street corner, including the intersection of any two or more streets;

- (3) Within 10 feet of any entrance of any structure during the hours that any business on the premises is open to the public or to persons having or conducting lawful business within those premises.
- (4) Within 10 feet of any entrance to any parking lot or parking garage.
- (5) Within 10 feet of any entrance to any building that contains one or more residences.
- (6) Within 10 feet of any fire hydrant, standpipe connection or fire control sprinkler connection.
- (7) Within any area of the Dwight D. Eisenhower National Airport property or Col. James Jabara Airport property designated by the Federal Aviation Agency or Transportation Security Agency as a secured zone. The Director of Airports may place additional, reasonable restrictions on street performers consistent with the non-public forum status of these properties.
- (8) Within a street, unless the performer holds a valid parade license for the date and time coinciding with the performance, issued under Chapter 3.14 of this Code, or has written permission to participate in an ongoing parade from the holder of the permit issued under Chapter 3.14 for that parade.
- (9) Within 50 feet of the boundaries of an approved community event or within 50 feet of any person participating in an event for which a permit has been issued by the Park and Recreation Department. This restriction shall extend for the duration of the approved or permitted period. This restriction shall not apply if the performer has written

permission to perform within the area described in such permits from the approval holder or permit holder.

(10) Within 50 feet of another performer.

- (b) A performer and the performer's equipment may not block or obstruct the free and safe movement of pedestrians. No performer shall place any object or position his or her person on a public sidewalk in a manner that causes there to be less than a four-foot width of clear space on that sidewalk for pedestrian passage. If a sufficient crowd gathers to observe a performer such that passage of the public through a public area is blocked or obstructed, a police officer, or fire or parks official may disperse that portion of the crowd that is blocking or obstructing the passage of the public. Those refusing to disperse may be cited with a violation of Section 5.48.020 or Section 10.04.070 of this Code, as appropriate. If a performer cannot conduct a performance in a location without blocking or obstructing the passage of the public, a police officer or fire or parks official may cause the performer to leave the location or require that the performer relocate his or her equipment, but shall not prevent the performer from occupying another location in compliance with this Chapter.
- (c) No performer shall construct, erect, or maintain any stage, platform, or similar elevated structure used to support any portion of a performer's body weight.
- (d) No performer shall use any object or engage in any activity in a manner that can cause serious bodily injury to any person.
- (e) No performer shall use any generator, storage battery, or any other power source in a manner that poses a fire or public safety-hazard.

- (f) No performer shall connect or maintain an electrical cord to a City power source without permission from the City Manager or the Manager's designee. It shall be the responsibility of a performer who utilizes any connection of an electrical cord to an adjacent building to ensure that the connection is safe and is maintained in such a manner as to prevent any tripping hazard.
- (g) No performer shall litter his or her performance site.
- (h) No performer shall use, or prevent the public from using, any public bench, waste receptacle, newspaper vending rack or enclosure, or other street furniture during the performance except for such items that are within the required safety perimeter.
- (i) No performer shall attach any object to, or damage any streetlight, traffic light or utility pole, any sign or signposts, any tree, shrub or any landscaping or any statue, fountain or other item of pre-existing public art in a performance or use any such item as a standard, support or holder for any sign.
- (j) No minor under the age of 16 shall perform unless the minor is at all times accompanied by a responsible adult 18 years of age or older.
- (k) No performer shall perform in a public area between the hours of 11:00 p.m. and 8:00 a.m. Sunday through Thursday and 12:00 midnight and 8:00 a.m. on Friday and Saturday.
- (l) No performer shall perform with more instruments, props, equipment, merchandise, or other items than the performer can reasonably transport or remove at one time.

- (m) No performer shall place his or her instruments, props, equipment, merchandise, or other items in a public area for more than two hours without performing in accordance with the provisions of this chapter.
- (n) No performer shall leave his or her instruments, props, equipment, merchandise, or other items unattended. Unattended items in a public area constitute a public nuisance, and are subject to removal as abandoned property.
- (o) No performer shall perform so that any aspect of the performance creates a sound that is in violation of Chapter 7.41 of this Code.
- (p) No performer shall block or obstruct a curb cut.
- (q) No performer shall engage in unlawful advertising, as defined in Chapter 5.04 of this Code.
- (r) No performer shall perform on any bike path without prior approval from the City Manager or the Manager's designee."

SECTION 3. Section 10.36.035 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

**"Performances requiring a permit.**

- (a) A performer who performs for a charge or offers merchandise for sale upon public areas shall first obtain a street and sidewalk vending license and be subject to all applicable provisions of Chapter 3.97 of this Code and amendments thereto, including restrictions pertaining to allowable locations for such vending. A performer who performs without charge, and does not offer merchandise for sale, shall not be required to obtain a street and sidewalk vending license. A performer may solicit voluntary contributions after a performance, and may receive them in

any receptacle. A donation of a suggested amount solicited after a performance shall be considered a voluntary contribution.

- (b) No performer shall use any torch, flame or caustic or flammable substances without having first obtained the required permit from the Wichita Fire Department.”

SECTION 4. Section 10.36.040 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**“Integration with existing Code.**

Any performer in compliance with the performance restrictions of this chapter shall not be deemed guilty of loitering under Chapter 5.48 of this Code nor guilty of soliciting in a park, under Section 9.04.060 of this Code, nor shall such performer be required to obtain a permit under Sections 9.04.030, 9.04.070, or 9.04.080 of this Code.”

SECTION 5. Section 10.36.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**“Enforcement.**

- (a) Any person who is convicted of violating any of the performance restrictions or of failing to obtain any of the permits imposed or required by this chapter shall be guilty of a misdemeanor, which shall be punishable as follows:
  - (1) For a first offense, by a fine not less than \$100, nor more than \$250, or imprisonment for a definite term which shall not exceed thirty (30) days, or by both such fine and imprisonment;
  - (2) For a second offense, by a fine not less than \$250, nor more than \$500, or imprisonment for a definite term which shall not exceed three (3) months, or by both such fine and imprisonment;



(3) For a third and subsequent offense, by a fine of not less than \$500, nor more than \$1,000, or imprisonment for a definite term which shall not exceed six (6) months, or by both such fine and imprisonment.

(b) In addition to the penalties previously described in this section, the City may seek an injunction against any performer through civil action in any court of competent jurisdiction to enjoin further violations of the performance restrictions described in this chapter, or to enjoin street performance by a given performer entirely.”

SECTION 6. The originals of Sections 10.36.020, 10.36.030, 10.36.040 and 10.36.050 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 25<sup>th</sup> day of April, 2017.

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Jeff Longwell, Mayor

Attest:

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Karen Sublett, City Clerk

Approved as to Form:

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Jennifer L. Magaña  
City Attorney and Director of Law