



To the Honorable Council
City of Norfolk, Virginia

April 26, 2011

From: Denise Thompson, Environmental
Protection Programs Manager

Subject: Regulating Small
Performances in Parks and on
Sidewalks in Norfolk

Reviewed: Anne Odell, Assistant City Manager

Ward/Superward: City-wide

Approved:

Item Number: R-3

Anne Odell

Marcus D. Jones

Marcus D. Jones, City Manager

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance to add a section to the Norfolk City Code pertaining to small performances in parks and on sidewalks. Also called busking, these performances typically include music, acrobatics, art and storytelling. The ordinance will provide guidance to buskers and encourage them to enliven public areas.

IV. **Analysis**

Busking is the practice of performing in public places, often for tips. Performances may include music, acrobatics, art and storytelling. In Norfolk, musicians are most frequent. Busking can enliven public spaces and add to the vitality and cultural life of an urban area by:

- Providing public exposure to a wide variety of quality entertainment for a minimum expense;
- Making cities safer by making streets more social and less isolated;
- Creating a mutually beneficial commercial environment for stores, performers and the public.

Since May, the Facebook group SPIN (Street Performing in Norfolk) has showcased and recruited performers at a variety of community events. Busking is not addressed specifically in the City's Code, however, and a request was made for the City to provide clear guidance.

To provide this guidance, the City convened a Busking Working Group that included:

- Downtown Norfolk Council
- Downtown Norfolk Civic League
- FestEvents
- SPIN
- AltDaily
- Freemason Street Area Association
- City staff from Police, REPOS, Commissioner of Revenue, Seven Venues, City Attorney
- Ghent Business Association also contacted

The resulting ordinance is intended to help protect the health, safety and welfare of residents while welcoming the opportunity to showcase our high-quality performers.

The recommended ordinance applies to individuals or small groups (under 30 people) performing on sidewalks or within City parks, whether done for free or in exchange for individual donations from bystanders. Performers may not perform in streets without a permit (the City's Parade and Assembly Ordinance addresses activities in streets), and must not perform too closely to business entrances and exits, bus stops, street corners, marked pedestrian crosswalks, or rail tracks and platforms. They may not use a power source that poses a fire or public safety hazard in connection with a performance, and must adhere to all standing City ordinances including noise, animal welfare, obscenity and others. Violations will be a Class 3 Misdemeanor.

V. Financial Impact

N/A

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process. Additionally, the Busking Working Group met several times, and representatives communicated directly with their constituents.

VIII. Board/Commission Action

This ordinance was presented to City Council's Health and Human Development Committee on March 8, 2011.

IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office, the Police Department, the Department of Recreation, Parks and Open Space, the Commissioner of the Revenue and Seven Venues.

Supporting Materials from the Office of the City Attorney include:

Ordinance

3/29/11 sb

Form and Correctness Approval

By

Office of the City Attorney

Jade Cloud

NORFOLK, VIRGINIA

Contents Approved:

By

DEPT.

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 29 OF THE NORFOLK CITY CODE, 1979, **SO AS TO ADD ONE NEW SECTION, SECTION 29-70.1, REGULATING SMALL PERFORMANCES IN PARKS AND ON SIDEWALKS.**

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Chapter 29 of the Norfolk City Code, 1979, is hereby amended and reordained so as to add one new Section, Numbered 29-70.1, to read as follows:

Sec. 29-70.1 Small Performances in Parks and on Sidewalks.

(a) Intention of Council. The Norfolk City Council finds that performers in the parks and on the sidewalks of the City of Norfolk (City) will provide a public amenity that will enhance the character of the City. Moreover, the Council recognizes that public parks and sidewalks are traditional public forums as defined by the United States Supreme Court and therefore such performances are protected by the First Amendment of the United States Constitution. Consequently, the City shall not regulate such performances except for the protection of the public health, safety, and welfare, and then only to the extent consistent with the First Amendment of the United States Constitution. The phrase "health, safety and welfare" includes but is not limited to the interests of residents, of the owners of lawful, code-compliant businesses and their customers, and of members of the public generally in the peaceful use and enjoyment of their homes, businesses and the public places within the City.

(b) Definitions.

The following terms shall have the meanings set out herein, unless the context in which they occur clearly indicates otherwise:

Perform, Performing or Performance means acting, singing, playing musical instruments, pantomime, mime, magic, dancing and artistry generally, done pursuant to this ordinance, whether done for free or in exchange for individual donations from bystanders.

Performer(s) means an individual or small group performing on sidewalks or within the parks of the City of Norfolk, pursuant to this ordinance.

Small Performance(s) means a performance involving less than thirty performers; thirty or more requires a permit to assemble in a park or on the sidewalks under other sections of this Code, such as 29-67.1 (Parades, public assemblies and expressive activities; permits).

Street(s) means that portion of a highway, designed or ordinarily used for vehicular travel, including gutters and medians but excluding sidewalks and/or shoulders bordering gutters.

(b) Small Performance Restrictions - Generally.

Performer(s) shall not:

- (1) Perform In the streets without a permit issued pursuant to other sections of this Code, such as Section 29-67.1. (Parades, public assemblies and expressive activities; permits).
- (2) Perform within ten (10) feet of any bus stop, Rail Transit Platform or track that is part of the Public Transportation System, which includes but is not limited to the project popularly known as "Light Rail".
- (3) Perform within ten (10) feet of any street corner or a marked pedestrian crosswalk.
- (4) Perform so close to the outer edge of any entrance or exit of any residence or business, including but not limited to, doors, vestibules, driveways, outdoor dining areas or emergency exits, so as to interfere with entrance to or exit

from the residence or the business during the hours that such business is open to the public.

- (5) Use any weapon, tool or other object or prop in a performance that by its nature may cause serious bodily harm. Examples of such objects include but are not limited to firearms, knives, spears and chain saws.
- (6) Engage in any activity in a performance, regardless of the nature of any object or prop, that might cause serious bodily harm to any person. An example of such an activity includes but is not limited to the use of fire in a performance.
- (7) Use in connection with a performance any generator, wet cell battery with removable fill caps, or any other power source that poses a fire or public safety hazard.
- (8) Litter a performance site. Performers must clean up their litter, if any, after the conclusion of a performance.
- (9) Being a minor under the age of eighteen (18), perform unless accompanied at all times by a responsible adult eighteen (18) years of age or older, or perform under circumstances that would violate the City's Juvenile Curfew Ordinance or any other laws regulating juveniles, including but not limited to the truancy laws.
- (10) Perform with more instruments, props, equipment, or other items than one performer can reasonably transport or remove at one time.
- (11) Leave instruments, props, equipment, or other items unattended during a performance. Performers must promptly remove such items after a performance.
- (12) Perform in violation of Chapter 26 of the City Code, which restricts noise levels within the City.

These restrictions include but are not limited to those of City Code Section 26-10, setting maximum sound pressure levels based on time of day and the category of the area (e.g., "noise sensitive zone" or "residential"), and Section 26-8 (b), allowing only parties with special permission by ordinance or other lawful grant of authority from the City, such as a permit, to exceed the levels set by Section 26-10 for specified periods of time on City property categorized as for "park and recreational use."

- (12) Perform or otherwise behave in violation of any laws regulating the possession or use of animals, including but not limited to, such provisions of the Norfolk City Code as Chapter 6.1 (concerning Animal Control and Welfare); 6.1-7 (keeping certain animals within City); 6.1-50 (licensing of certain animals required); 25.2-32 (dogs and animals in parks generally); and 25.2-83 (dogs and animals in Town Point Park).
- (13) Perform or otherwise behave in violation of the law. This code section is not an exception to other restrictions under the law which may apply to a performer or a performance depending on all the facts and circumstances of a particular performance. These restrictions include but are not limited to those Code sections referenced elsewhere within this ordinance and the following laws: Trespassing (Norfolk City Code Section 29-48); Obstructing Free Passage of Others (Virginia Code Section 18.2-404); Assault and Battery (Norfolk City Code Section 29-8); Begging (Norfolk City Code Section 42-16); Disorderly Conduct (Norfolk City Code Section 29-10); Riot and Unlawful Assembly (Virginia Code Section 18.2-404 et seq.); Charitable Soliciting (Norfolk City Code Sections 40-15 et seq. and Virginia Code Sections 57-48 et seq.); Parade and Assembly (Norfolk City Code Section 29-67.1); Neighborhood and Leisure Services – park and special event requirements generally -- (Norfolk City Code Section 25.1-1 et seq.); Licenses and

Taxation (Norfolk City Code Section 24-1 et seq.); Public Health Regulations (Norfolk City Code Section 2-478 et seq.); Fire-Rescue (Norfolk City Code Sections 17.1-1 et seq.); Public Nudity (Norfolk City Code Section 28-12); and Obscenity (Norfolk City Code Section 28.1 et seq.).

(c) Small Performance Restrictions – Time, Place and Manner:

In enforcing these restrictions, law enforcement officers shall bear in mind that the City's parks and sidewalks are traditional public forums within which all citizens have free speech and expression rights protected by the First Amendment, but that no citizen may exercise a "heckler's veto" on the speech or expression of another, and that those holding advance permits to exercise their rights within a specific traditional public forum should be given precedence, within the limits of the Constitution, over those without permits. This does not mean that the issuance of a permit converts a traditional public forum into private property or that those without permits may simply be banned from parks and sidewalks during periods those spaces are under permit. Consequently, law officers shall enforce the following restrictions pursuant to the U.S. Supreme Court's doctrine allowing for time, place and manner restrictions of First Amendment activities in public parks and sidewalks based on circumstances at the scene, adhering to the following principles.

Law enforcement officers shall not consider the content of the speech or expression at issue, and shall take action against speakers only as necessary to ensure public order and safety, the free flow of pedestrian and vehicular traffic and to prevent interference with the message of a lawful permit holder by those without permits (that is, all restrictions imposed by officers at the scene shall be narrowly tailored to advance a substantial governmental interest). In taking such actions against speakers, law enforcement officers shall leave open ample alternative avenues of expression, such as nearby areas of the park or sidewalks. Finally, in disputes between two or more speakers, all without permits, law enforcement officers shall give precedence, within the limits of the Constitution, to the free speech and expression rights of the first speaker on the scene.

Performers shall not:

- (1) Perform or otherwise behave so as to cause a performer(s) and/or the performer(s) equipment to block or obstruct the free and safe movement of pedestrians. Law enforcement officers may, if a sufficient crowd gathers to observe a performance such that the passage of the public through a public area is blocked or obstructed, disburse that portion of the crowd that is blocking or obstructing the passage of the public. If a performer(s) cannot conduct a performance in a specific location without blocking or obstructing the passage of the public, law enforcement officers may cause the performer(s) to leave the immediate location, but shall not prevent the performer(s) from occupying another lawful location in compliance with this ordinance.
- (2) Perform or otherwise behave so as to prevent or obstruct the public's participation in and enjoyment: of another performer(s) already established in the area; of another person already established in the area and exercising his or her First Amendment rights, although not by performing; or of an event or some portion thereof that is open to the public and occurring pursuant to permit. Law enforcement officers may, should this occur, require a performer(s) to take action so as to alleviate the situation. Such action includes but is not limited to law enforcement officers moving the performer(s) a reasonable distance from their immediate location or requiring the performer(s) to lower the volume of voice or instruments.
- (3) Perform or otherwise behave so as to interfere with a resident's lawful use and enjoyment of his property. Officers shall only enforce this provision upon a complaint from the resident of the property, and shall apply the time, place and manner principles set out above.
- (4) Perform or otherwise behave so as to interfere with a business owner's or operator's lawful use and administration of a business. Officers shall only enforce this provision upon a complaint from the owner, manager or other person in charge of the business, and

shall apply the time, place and manner principles set out above.

(d) **Severability.** If any portion of this section of the Code is for any reason held to be invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this section, and such invalid provisions or portions thereof shall be severable.

(e) **Penalty.** Any person violating this ordinance shall be guilty of a class three misdemeanor.

Section 2:- That this ordinance shall be in effect from and after its adoption.