



City of Arts & Innovation

Public Safety Committee Memorandum

TO: PUBLIC SAFETY COMMITTEE MEMBERS **DATE: OCTOBER 17, 2018**

FROM: POLICE DEPARTMENT **WARD: ALL**

SUBJECT: ORDINANCE OF THE CITY OF RIVERSIDE, CALIFORNIA, AMENDING TITLE 13 OF THE RIVERSIDE MUNICIPAL CODE BY ADDING CHAPTER 13.30 - STREET PERFORMANCE AND AMENDING CHAPTER 13.21 – FESTIVAL OF LIGHTS REGULATIONS TO INCLUDE COMPLIANCE WITH CHAPTER 13.30 - DIRECT SUBMITTAL

ISSUE:

Approve and forward to City Council for adoption an ordinance of the City of Riverside, California, amending Title 13 of the Riverside Municipal Code by adding Chapter 13.30 “Street Performance” establishing regulations for street performers in the City of Riverside and amending Chapter 13.21 “Festival of Lights Regulations” to include compliance with Chapter 13.30.

RECOMMENDATION:

That City Council:

1. Approve an Ordinance adding Chapter 13.30 “Street Performers” to the Riverside Municipal Code, establishing regulations for street performers and amending Chapter 13.21 “Festival of Light Regulations” to include compliance with Chapter 13.30; and
2. Recommend that the City Council adopt an Ordinance adding Chapter 13.30 “Street Performers” to the Riverside Municipal Code, establishing regulations for street performers and amending Chapter 13.21 “Festival of Light Regulations” to include compliance with Chapter 13.30.

BACKGROUND:

The City of Riverside recognizes that street performers enrich the ambiance of public spaces and their presence reflects the City’s commitment to being the City of Arts & Innovation. However, the Police Department has identified that, on some occasions, street performers pose a risk to the safety of the public because they create the potential for crowds to gather to such a degree that it blocks pedestrian traffic and potentially impairs emergency ingress and egress.

In particular, there has been an increase in the number of persons that have blocked sidewalks and spilled out into streets in order to view street performances. This has created a public safety concern. Due to sidewalks being blocked, pedestrians have been observed having to walk into the street. This would be particularly burdensome on persons with physical impairment

disabilities.

Due to the increase in performers in the past year, staff met to construct an ordinance that identifies a solution to this public safety concern. In tackling this issue, staff was mindful that street performers provide a constitutionally protected public benefit that enhances the character of the surrounding community. However, excessive crowds at street performances impacts pedestrians from traveling safely along the sidewalks, impedes the response times of public safety personnel, and impacts access to and egress from businesses. This Ordinance is the product of staff's aim to balance the value of street performers, the constitutional free speech and expression rights of the street performers, the public safety concerns with regards to emergency ingress and egress, the safety of visitors in crowded public places, and the need for local businesses to provide visitors access to their stores and shops.

The First Amendment right to free speech applies to a broad expanse of protected activity. This includes street performers. *Horton v. City of St. Augustine* (11th Cir. 2001) 272 F.3d 1318, 1333 upholds an ordinance prohibiting street performers from performing in a four-block area within the City's historic area. Meanwhile, courts have recognized the authority of cities to regulate street performance in order to maintain unimpeded traffic and pedestrian flow. *Id.* Consistent with First Amendment jurisprudence, the regulations must be content neutral and involve time, place, and manner restrictions narrowly tailored to serve an important governmental interest. The regulations must also leave open alternative channels of communications.

DISCUSSION:

Street performers can draw a crowd that has the potential to block paths of travel on sidewalks sometimes forcing the crowd to spill onto City streets with vehicular traffic. Police officers need a mechanism to keep pedestrian pathways clear and flowing to ensure the public is safe. The Police Department seeks to facilitate free speech and assembly whenever possible while preserving order and protecting persons and property. The preferred police response is one of crowd management to avoid the need for crowd control tactics.

Riverside Fire Department and paramedics with ambulance services such as American Medical Response (AMR) are first responders for medical emergencies. In addition to law enforcement needs, it is critically important that medical first responders can provide initial, primary care in a timely manner.

The City desires to balance the significant and substantial governmental interests related to the public health, safety, and welfare for pedestrians, vendors and businesses with First Amendment rights. To ensure there are safe and free flowing paths of travel, staff is recommending the attached ordinance to ensure that no street performer, the performer's equipment, nor the crowd the performer attracts may block or obstruct the free and safe movement of pedestrians.

Riverside Municipal Code Section 9.04.400(A) [*Conduct on public property*] states that people may not obstruct public ways "after having been notified by a law enforcement officer that he or she is in violation" ... "whether such person does so alone or together with one or more persons, or with equipment or personal property of any nature, and whether such person does so by standing, sitting, lying, or in any other manner." However, it is the Police Department's interpretation that this only allows law enforcement personnel to conduct enforcement against persons viewing the street performance who are creating a sidewalk or other public pathway obstruction and not the street performer(s) themselves, which is the source of the public safety concern needing to be addressed. In essence, with only the current municipal code, police officers

may move persons to create a pathway while not being able to conduct legal enforcement as the street performer continues the act.

It is in this spirit, while balancing the value of street performances with the public's expectation for a safe and orderly environment, that this ordinance is being proposed. It is the further intention of the City to balance the regulations and governmental interest with the recognized rights of performers to practice freedom of speech and freedom of expression to their intended audiences. Staff is mindful that government may only enforce regulations of time, place, and manner of expression that is content-neutral, narrowly tailored to serve an important governmental interest, and leave open ample alternative channels of communication. This draft ordinance would not discriminate based on the viewpoints or opinions of the street performers. The place and manner element contemplated is narrowly tailored in that it only limits performers from blocking sidewalks. In those limited circumstances, the draft ordinance would leave open a large area of public space for street performers. Performers would maintain ample alternative channels of communication, expression and reasonable access to perform in other areas so that the performers may reach their intended audience. In so doing, the City furthers its significant interest in managing large crowds and avoiding congestion.

In addition, the draft ordinance to be presented to the Committee proposes the following reasonable regulations on street performances:

A. No Performer may perform:

1. Within ten (10) feet of any bus stop;
2. Within ten (10) feet of any street corner or a marked pedestrian crosswalk;
3. Within ten (10) feet of the outer edge of any entrance of any business, including, but not limited to: doors, vestibules, driveways, outdoor dining area entries, and emergency exits, 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 ten (10) feet of the outer edge of any entrance to any residence;

B. A Performer and the Performer's equipment may not block or obstruct the free and safe movement of pedestrians. If a Performer attracts a crowd sufficient to block the passage of the public through a public area, the City may disperse that portion of the crowd that is blocking or obstructing the passage of the public. If efforts to move the crowd fail to adequately protect the public safety or order, a City police officer 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 that does not block the free and safe movement of pedestrians or vehicular traffic. Failure on the part of a Performer to comply with a lawful order to leave his or her location or relocate his or her equipment under this paragraph shall be deemed a violation of this Code.

C. A Performer may not perform on the public way so as to obstruct access to private property.

D. There shall be no charge for a performance. Money given for a performance shall be on a donation only basis. A Performer may perform whether or not the Performer receives compensation for the performance. A Performer may not charge a set fee for the performance or use aggressive measures to solicit donations.

E. No Performer shall use any knife, sword, torch, flame, axe, saw, or other object that can

cause serious bodily injury to any person, or engage in any activity, including, but not limited to, acrobatics, tumbling, or cycling, that can cause serious bodily injury to any person.

- F. No Performer shall use any generator, wet cell battery with removable fill caps, or any other power source that poses a fire or public safety hazard. No Performer shall connect or maintain an electrical cord to an adjacent building or to a City power source without prior consent.
- G. No Performer shall place any object on a public sidewalk which causes less than a five-foot (5') contiguous sidewalk width being kept clear for pedestrian passage.
- H. A Performer shall stay within ten (10) feet of his or her instruments, props, equipment, merchandise, or other items at all times that these items are on a public sidewalk, public street, or public right-of-way.
- I. No Performer shall perform in contravention of the allowable noise standards established by this Code.
- J. No Performer shall block or obstruct a Curb Cut.
- K. No Performer shall ask or allow any observer, bystander, or audience member to engage in any activity, including, but not limited to, acrobatics, tumbling, or cycling that can cause serious bodily injury to any person.
- L. No Performer shall fasten or affix any item including, but not limited to, tape, strap, chain, tie, band, or rope, to any public property.
- M. No Performer shall utilize or prevent the public from utilizing any public benches, waste receptacles or other street furniture during the performance.
- N. No minor under the age of 16 may perform unless the minor is at all times accompanied by a responsible adult 18 years of age or older, has obtained an entertainment work permit issued by the Department of Industrial Relations of the State of California and maintains the permit in his or her possession at the time of the performance.
- O. In addition to the above requirements, Performers must comply with the requirements of Section 13.21 of this Code.

Additionally, Chapter 13.21 "Festival of Lights Regulations" will need to have Section 13.21.040 "Regulations of Performers" to include compliance with the new Chapter 13.30 "Street Performance".

FISCAL IMPACT:

There is no fiscal impact associated with the approval of the proposed amendments to Title 13 of the Riverside Municipal Code.

Certified as to

availability of funds: Edward Enriquez, Acting Chief Financial Officer/City Treasurer

Approved by: Lea Deesing, Assistant City Manager

Approved as to form: Gary G. Geuss, City Attorney

Attachments:

1. Draft Ordinance
2. Presentation