

ORDINANCE NO. 1403

FINAL PUBLICATION NO. 3481. FIRST PUBLICATION IN THE CHRONICLE ON NOVEMBER 29, 2018

CITY OF CAMBRIDGE

In the Year Two Thousand and Eighteen

AN ORDINANCE

In amendment to the Ordinance entitled "Cambridge Municipal Code."

That the Municipal Code of the City of Cambridge be amended in Title Twelve entitled "Streets, Sidewalks and Public Places" in Chapter 12.16 entitled "Street and Sidewalk Use Regulations" Section 12.16.170 entitled "Street Performers" by striking out the section in its entirety and substituting in place thereof a new section 12.16.170 entitled "Street Performers" which reads as follows:

Section 12.16.170, Street Performers

A. Introduction.

The City Council of the City of Cambridge (the "City") finds that the existence in the City of street performers provides a public amenity that enhances the character of the City and seeks to encourage such performances to the extent that they do not interfere with the reasonable expectations of residents to the enjoyment of peace and quiet in their homes, the ability of businesses to conduct their businesses uninterrupted, or for the free flow of traffic and movement on public ways, public sidewalks, and other public pedestrian areas (collectively hereinafter referred to as "Public Ways"). This Section seeks to balance the interests of the performers with those of the residents and businesses of the City.

B. Enforcement.

The City Council designates the Cambridge Arts Council (the "Arts Council") to be the department of the City primarily charged with the responsibility of supervising and enforcing the provisions of this Section.

C. Definitions.

1. "Perform" includes, but is not limited to, the following activities: acting; singing; playing musical instruments; pantomime; juggling; magic; dancing; reading; reciting; puppetry; and sidewalk art (working with non-permanent, water-soluble media, such as chalk, pastels, or watercolors, directly on the pavement).

"Perform" shall not include the production of items for sale, such as jewelry making or craft production, but may include the creation of visual artworks that are demonstrated live in a large-scale performative manner.

2. "Performer" means a person who has obtained a Permit pursuant to this Section.

3. A "Performing Group" means a group of four or more Performers who perform together, are identified as such in their permit application, and noted as such on their Permits. All Performers acquiring a Permit for a group performance must perform as a group; group Permits do not authorize individual performance.

4. "Public Areas" means Public Ways, parks, plazas, and playgrounds.

D. Prohibition.

1. No person may perform in a Public Area without a Permit issued by the Arts Council pursuant to Subsection E of this Section.

2. In accordance with the Cambridge Fire Department's (the "Fire Department's") rules promulgated by the Cambridge Fire Chief (the "Fire Chief") pursuant to his authority under G. L. c. 148, § 28 and the Code of Massachusetts Regulations promulgated pursuant thereto, the use of fire in a public assembly, including, but not limited to, street performing, is not permitted in the City.

E. Permit.

1. A Permit shall be issued by the Arts Council to each applicant in exchange for a completed application at no fee. Each applicant for a Permit must present valid identification at the time of submitting the application for a Permit.

2. A completed application for a Permit shall contain the applicant's name, residential address, contact information, including e-mail address and telephone number, group name, if applicable, instrumentation, and type of performance, and shall be signed by the applicant.

3. A Permit shall contain the Performer's name; group name, if applicable; Permit number; date issued; year in which the Permit is valid; and a brief description of the type of performance permitted. A Permit shall be valid from the date on which it is issued through the end of that calendar year.

4. A Permit shall not be transferable. Each member of a Performing Group who performs together shall be required to obtain an individual Permit in person.

5. Upon issuing a Permit, the Arts Council shall give the Performer a copy of this Section.

6. If a Performer loses the Performer's Permit, a replacement Permit may be obtained at no fee.

F. Display of Permit.

1. A Performer shall clearly display the Performer's Permit while performing and shall allow inspection of the Permit by any Cambridge Police Officer ("Police Officer") or staff person of the Arts Council upon request. Refusal to allow inspection of a Permit upon request by a Police Officer or staff person of the Arts Council, or refusal to display a Permit, may result in the revocation of the Permit.

G. Permitted Performances.

1. Performances may take place in the following locations:

a. In Public Areas when not interfering with use of a park permit, special events permit, or regular use of playgrounds, except, within one hundred (100) feet of an elementary and/or secondary school, library, church,

synagogue, temple, mosque, or other house of worship while in session, or a hospital at any time; and any areas excluded by the City Council, the Commissioner of the Cambridge Public Works Department (the "Commissioner of Public Works"), the Police Commissioner of the Cambridge Police Department (the "Police Commissioner"), or the Fire Chief, pursuant to Subsection H of this Section;

b. On private property, with the written permission of the owner or other person in control of such property;

c. In Public Areas where an authorized street fair or public festival is being conducted, but only with the express permission of the sponsor or producer of such fair or festival.

2. Performances may take place at the following times:

Monday through Thursday, between 7:00 a.m. and 11:00 p.m.;

Friday, between 7:00 a.m. and 12:00 midnight;

Saturday, between 7:00 a.m. and 12:00 midnight;

Sunday, between 12 noon and 11:00 p.m.

3. Sound and Noise Regulations:

a. No Performer or Performing Group may generate noise exceeding a median sound level of eighty decibels (80 db(A)) measured at a distance of twenty-five (25) feet from the Performer or Performing Group. A Performer or Performing Group may use sound amplification as long as eighty decibels (80 db(A)) measured at a distance of twenty-five (25) feet from the Performer or Performing Group is not exceeded. Upon receipt of a complaint, a designated staff person from the Arts Council shall, with the permission of the complainant, measure the sound level inside the structure wherein the occupant has complained of noise from a street performance. If the sound level inside the structure wherein the occupant has complained of noise from a street performance exceeds a median sound level of fifty decibels (50 db(A)), and exceeds the background noise by at least ten decibels (10 db(A)), the Performer or Performing Group causing the excessive sound level shall either turn down the music or move to a distance from the structure so as to reduce the sound level to a level within these limitations. Background Noise will be measured using the L90 statistical value.

b. It shall be prohibited to use prerecorded music as part of a performance, except as backup accompaniment to a live performance. All prerecorded music shall be turned off when the Performer or Performing Group is not performing. The volume of prerecorded music shall not exceed fifty (50) decibels db(A) on its own or eighty (80) decibels db(A) with music/audio accompaniment.

c. Drums shall be inaudible at a distance of one hundred fifty (150) feet.

4. A Performer or Performing Group may not create an undue interference with the passage of the public through a Public Area. If a Performer or Performing Group attracts a crowd sufficient to obstruct a Public Area as defined in this Section, the Performer or Performing Group shall encourage the crowd to relocate and no longer obstruct the Public Area. A Police Officer may disperse the portion of the crowd that is creating the obstruction. The Police Officer shall not cause the Performer to leave the location unless efforts to move the crowd fail to adequately protect the public safety or order. A Police Officer shall not ask the Performer to leave the location unless all other means of restoring the public safety or order have been exhausted.

5. No Performer or Performing Group may perform within fifty (50) feet of another performer or group of performers.

6. A Performer or Performing Group may request contributions of money or property at a performance, provided that signs requesting contributions shall not exceed twelve (12) inches by eighteen (18) inches in size. Contributions may be received in any receptacle, such as an open musical instrument case, box or hat. Performers may offer for sale items of their own artistic works if said items directly relate to the performance for which they are permitted to perform.

7. On sidewalks, displays must not obstruct accessibility ramps, doorways, or windows (i.e., Performers shall not tape or post signs or posters on windows or lean displays against windows so as to obstruct a clear view through the window), and must not exceed more than twenty percent (20%) of the width of the sidewalk from the property line of the premises in front of which the display is installed. Displays and/or Performer setups must be located at least ten (10) feet away from business doorways. Notwithstanding the foregoing, a Performer may set up a display on the public sidewalk in front of a doorway to a business if the business is not open, assuming said display meets all other requirements of this Section. A Performer or Performing Group shall be required at all times to maintain four and one half (4 1/2) feet of sidewalk between their setup and the edge of the sidewalk in order to allow for accessibility for persons with disabilities.

8. In Public Areas other than sidewalks, no such display shall exceed twenty-five (25) square feet, and it shall be prohibited to place a carpet, rug, blanket, tent or other such covering over grass in a Public Area. No tents may be erected in Public Areas without a tent permit from the Fire Department. Any tent permit received from the Fire Department must be current and on display at all times while any such tent is erected. Tables and chairs may be used as long as they do not exceed the maximum footprint outlined in this Section.

9. Unless otherwise provided in rules and regulations promulgated by the Arts Council pursuant to Subsection J of this Section, performance locations/spaces are first come, first served, and cannot be reserved with equipment, apparatus, or by persons not permitted to perform. Live performance must take place at all times while a Performer, or Performing Group, is set up. Fifteen (15) minute breaks between sets are allowed once per hour.

10. It shall be prohibited to use public furniture, whether movable or immovable, or Public Art structures as part of a performance setup or for the storage of equipment, displays, supplies, or materials used in any performance.

H. Exclusion of Public Areas.

1. A specific Public Area may be excluded from performances in accordance with a decision of the City Council after a public hearing, notice of which shall be advertised once in a local newspaper and on the Arts Council's website, no less than fourteen (14) days prior to said hearing. In addition, a written notice shall be sent to Community Arts Advocates, Inc., or its successor(s), not less than ten (10) days prior to said hearing.

a. Based upon evidence presented to the City Council during its deliberations on the adoption of this Section, the City Council designated Brattle Street on both sides from the northerly side of Church Street to the northerly lot line of 76 Brattle Street as an excluded area, thereby prohibiting performances in that area.

2. In the case of an emergency, the Police Commissioner or the Fire Chief may prohibit a Performer or Performing Group from performing in a particular location. In the case of such an emergency, any holder of a Permit who disputes the need for said emergency performance prohibition may appeal to the City Council for review.

3. In the case of an emergency, the Commissioner of Public Works may prohibit a Performer or Performing Group from performing in a particular park or playground. In the case of such an emergency, any holder of a Permit who disputes the need for said emergency performance prohibition may appeal to the City Council for review.

I. Penalties.

1. Non-criminal Disposition.

Whoever violates any provision of this Section may be penalized by a non-criminal disposition as provided in G. L. c. 40, § 21D. For purposes of this Section, the following officials shall be enforcing persons: Police Officers and/or Arts Council staff. The penalty for each violation will be twenty-five dollars (\$25).

2. Suspension of Permit.

The Arts Council and/or the Cambridge Police Department may suspend a Permit for no more than thirty (30) days if:

- a. a Performer is found to have knowingly provided false information in the application; or
- b. a Performer has received three (3) noncriminal dispositions within one (1) calendar year.

3. Revocation of Permit.

The Arts Council may revoke a Permit for the remainder of the calendar year if:

- a. a Performer has received five (5) non-criminal dispositions during that calendar year;
- b. a Performer fails to clearly display the Performer's Permit while performing; or
- c. a Performer fails to allow inspection of the Performer's Permit by any Police Officer or any Arts Council staff upon request.

4. Before suspending or revoking a Permit, the Arts Council must hold a public hearing, after ten (10) days' written notice to the Performer setting forth the facts constituting the basis for the proposed suspension or revocation.

5. A Performer may not receive a Permit unless all tickets issued pursuant to this Section from the previous calendar year(s) have been paid in full.

J. Regulations.

The Arts Council shall have the authority to promulgate rules and regulations not inconsistent with the provisions of this Section, with the approval of the City Manager, as may be appropriate or necessary for the implementation of this Section.

K. Exclusivity.

The provisions of this Section take precedence over any other City regulations or ordinances applicable to street performances. To the extent other City regulations or ordinances are applicable and are inconsistent with this Section, this Section shall govern. Sound levels generated by street performances shall be governed by this Section and not by the Cambridge Noise Ordinance.

L. Peace and Quiet.

A performance in accordance with this Section shall be presumed not to constitute a disturbance of the peace or quiet.

M. Severability.

The provisions of this Section are severable, and if any part of this Section should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this Section and the remainder of this Section shall stay in full force and effect.

N. Effective Date.

The provisions of this Ordinance, as amended, shall be effective commencing on January 1, 2019.

In City Council December 10, 2018.
Passed to be ordained by a yea and nay vote:-
Yeas 9; Nays 0; Absent 0.
Attest:- Donna P. Lopez, City Clerk.

A true copy;

ATTEST:-

Donna P. Lopez
City Clerk

