

**AN ORDINANCE TO AMEND CHAPTER 36 OF THE CITY CODE TO REPEAL SECTION 36-9 THEREOF REGARDING REGULATION OF ITINERANT PERFORMERS**

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#4460

**WHEREAS**, the Wilmington City Code establishes laws for operations within the City of Wilmington; and

**Sponsors:**

**WHEREAS**, although the City Code is regularly amended, it nonetheless contains certain provisions that are no longer necessary or appropriate, as well as sections that require clarification; and

**Council  
President  
Shabazz**

**WHEREAS**, recognizing the importance of the City Code, the City has embarked upon a comprehensive review of the Code to identify sections requiring revision and to propose such amendments through legislation; and

**Council  
Member  
Walsh**

**WHEREAS**, the permitting process for itinerant performers delineated in Section 36-9 of the City Code has not been regularly utilized; and

**WHEREAS**, the Main Street Performance Committee, which is the entity authorized to implement Section 36-9, is inactive; and

**WHEREAS**, the conduct which is prohibited under Section 36-9, such as excessive noise disturbance, disorderly conduct, and interference with pedestrian passage, is already addressed by other established Delaware and City laws; and

**WHEREAS**, in light of the foregoing, Section 36-9 of the City Code should be repealed.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** Chapter 36 of the City Code is hereby amended by repealing Section 36-9 thereof by deleting the stricken language as follows:

~~Sec. 36-9. —Regulation of itinerant performers.~~

~~(a) Definitions.~~

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

~~"Perform" shall not include the production of items for sale.~~

~~(2) Performer means a person who has obtained a permit pursuant to this section.~~

~~(3) Public areas means public sidewalks, parks, playgrounds and other public areas for pedestrian use in the City of Wilmington.~~

~~(4) The Main Street Performance Committee shall consist of seven members. Two members shall be appointed by the mayor for terms of one and three years, two members shall be appointed by the president of city council for terms of one and three years, and three members shall be appointed by the Executive Director of Downtown Visions for terms of one, two, and three years. All members shall serve at the pleasure of the appointing authority. The chair of the committee shall be a member of the committee and shall be selected by a majority of the members. The committee shall represent a cross-section of the Wilmington artistic community.~~

~~(b) Prohibition. No person may perform in a public area without a permit issued to them.~~

~~(c) Permit.~~

~~(1) A permit shall be issued by the Main Street Promotions Committee to each applicant therefore in exchange for a completed application and a fee of \$5.00, the said fee being at the discretion of Downtown Visions and subject to change.~~

~~(2) A completed application for a permit, and the permit itself, shall contain the applicant's name, residence address and telephone number, and shall be signed by the applicant.~~

~~(3) A permit shall be valid from the date on which it is issued for a period of one year from that date.~~

~~(4) A permit shall be nontransferable, and shall contain the permit number of the applicant and the year in which the permit is valid. One permit may be issued for a group performance of up to a maximum of three group members. Larger groups require a special permit. In no event shall any group of performers of three or less, identified as such in their application and noted on their permits, be charged more than the \$5.00 fee.~~

~~(5) Upon issuing a permit, Downtown Visions shall also give the performer a copy of the rules and regulations for itinerant performers and a copy of this section.~~

~~(6) If a performer loses his or her permit, one replacement permit per year may be obtained for a fee of \$5.00.~~

~~(d) *Display of permit.* A performer shall clearly display his or her permit while performing, and shall allow inspection of the permit by any Wilmington police officer or staff person of Downtown Visions or of the Main Street Promotions Committee on request.~~

~~(e) *Permitted performances.*~~

~~(1) Performances may take place in the following locations:~~

~~a. Performers may not perform outside of areas designated by Downtown Visions and the Main Street Promotions Committee. All areas will be located within the geographic boundaries of Wilmington's Downtown Business Improvement District, as specified in Chapter 44 of the Wilmington City Code.~~

~~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, with the permission of the sponsor of such fair or festival.~~

~~d. The licensee may not block roadways, sidewalks, crosswalks, driveways, stairways, curb cuts, handicapped access ramps nor block access to buildings, parks, public conveyances, businesses, crosswalks, traffic control poles containing pedestrian crosswalk button(s).~~

~~(2) Performances may only take place at times determined by Downtown Visions and the Main Street Promotions Committee, not to begin prior to 8:00 a.m. nor to conclude after midnight.~~

~~(3) No performer or group of performers may generate noise which exceeds the ambient noise level by ten dBA, as per article III, section 11-65 (Allowable noise levels and prohibited measurable noise disturbances) of the Wilmington City Code, said article incorporated by reference and a copy of which is attached to the ordinance from which this section derives herein. A performer or group of performers may use sound amplification as long as the resulting sound level is not exceeded. Upon a complaint by a business or resident, a designated staff person from the Wilmington Police Department, with the permissions of the business or resident, shall measure the sound level inside the residential dwelling. If the sound level exceeds a median sound level of 50 decibels, and exceeds the background noise by at least ten dBA, the performer or group of performers causing the excessive sound level shall either turn down the music or move to a distance from the origin of the complaint so as to reduce the sound level within these limitations. Background noise for this purpose shall mean L90.~~

~~(4) A performer may not create an undue interference with the passage of the public through a public area. If a performer attracts a crowd sufficient to obstruct a public~~

way, a police officer may disperse the portion of the crowd that is creating the obstruction.

(5) No performer or group of performers may perform less than 50 feet away from another group of performers.

(6) A performer may request contributions of money or property at a performance, provided that the sign requesting contributions is the approved sign sanctioned by the Main Street Promotions Committee. This sign is to be loaned to the performer for the duration of the performance and returned to Downtown Visions upon conclusion of the performance. Contributions may be received in any receptacle, such as an open musical instrument case, box or hat.

(7) Prior to being granted a street performance permit, all performances/entertainment will be reviewed for appropriate content and shall be subject to acceptance by the Main Street Promotions Committee.

a. A performer who performs and accepts contributions under the provisions of this chapter shall not be guilty of panhandling unless it is determined by a police officer that such a performance is not in the spirit of entertainment, but rather constitutes disorderly conduct.

(8) A performer may not create an undue interference with the passage of the public through a public area. If a performer attracts a crowd sufficient to obstruct the public way, 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.

(9) Performers may offer for sale recordings of their own work, in the form of records, cassettes, videotapes or compact discs. On sidewalks, displays must not obstruct handicap 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 20 percent of the width of the sidewalk from the property line of the premises in front of which the display is installed.

a. 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. In public areas other than sidewalks, no such display shall exceed 25 square feet, and it shall be prohibited to place a carpet, rug, blanket, or other such covering over grass in a public place.

(f) *Exclusion of public areas.*

(1) A specific public area may be excluded from performances in accordance with constitutional standards by decision of the Main Street Promotions Committee after a

public hearing notice of which shall be advertised no less than 14 days prior to said hearing.

~~(2) By decision of the chief of police in the case of an emergency: any holder of a license who disputes the need for said emergency exclusion may appeal to the board of licenses and inspections review for review.~~

~~(3) By decision of the commissioner of parks & recreation, in the case of an emergency regarding a park or playground: any holder of a license who disputes the need for said emergency exclusion may appeal to the board of licenses and inspections review for review.~~

~~(g) Penalties.~~

~~(1) Disposition. For purposes of this section, the following officials shall be specifically authorized to enforce the provisions of this section: Wilmington Police Officers, Downtown Visions, Main Street Promotions Committee staff as provided in this section. The penalty for each violation upon conviction in a court of competent jurisdiction shall be \$25.00 per violation.~~

~~(2) Suspension of permit.~~

~~a. The Main Street Promotions Committee and/or the Wilmington Police Department may suspend a permit for no more than 30 days if:~~

~~1. A performer is found to have knowingly provided false information in the application; or~~

~~2. A performer has received three non-criminal dispositions within one calendar year.~~

~~3. Revocation of permit. The Main Street Promotions Committee may revoke a permit for the remainder of the calendar year if a performer has received five summonses during that calendar year.~~

~~4. A performer may not receive a permit unless all tickets from the previous year have been paid.~~

~~(h) Exclusivity. The provisions of this section take precedence over any other city regulations or ordinance 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 Wilmington City noise ordinance, noting that this section was designed using guidelines set forth in the Wilmington City Code, Chapter II, Article III (Noise Control And Abatement).~~

~~(i) Peace and quiet. A performance done pursuant to this section shall have a rebuttable presumption that it does not to constitute a disturbance of the peace or quiet.~~

~~(j) Severability. The provisions of this section and section 36-9 derived from this section are declared to be severable in accordance with section 1-9 of the City Code.~~

**SECTION 2.** This Ordinance shall become effective immediately upon its passage by City Council and approval by the Mayor.

First Reading.....December 7, 2017  
Second Reading.....December 7, 2017  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved as to form this 7<sup>th</sup> day of  
December, 2017.

Elizabeth D. Power  
Senior Assistant City Solicitor

Approved this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance is part of a comprehensive set of revisions to the City Code to repeal certain provisions that are no longer necessary or appropriate and to amend sections that require clarification. This Ordinance amends Chapter 36 of the City Code by repealing Section 36-9 thereof because it has not been utilized and is unnecessary.

**FISCAL IMPACT STATEMENT:** This Ordinance has no anticipated fiscal impact.