

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF AVALON FOR THE REGULATION AND PERMITTING OF STREET PERFORMANCES AND AMENDING THE AVALON MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF AVALON DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 14 is hereby added to Title 4 of the Avalon Municipal Code to read as follows:

CHAPTER 14

STREET PERFORMERS

Sec. 4-14.101 Purpose.

The City Council 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 in a manner consistent with the overall public interest. The City Council also recognizes that street performers seek to and do draw crowds to their performance. This can create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks and through cross walks and impeding the response time of safety personnel. It can also impact access to and egress from businesses. Cognizant that street performers are engaged in First Amendment activities, this chapter imposes reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes or the ability of businesses to operate and conduct their business.

Sec. 4-14.102 Definitions.

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

(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 after a performance is not a charge.

(b) **Handcrafts.** 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. Handcrafts are not likely to communicate a message, idea, or

concept to others, are often produced with limited variation, and often have functional utility apart from any communicative value they might have. As used herein, handcrafts do not include visual art.

(c) **Performer.** An individual who performs in a public area, for the purpose of providing public entertainment.

(d) **Perform.** To engage in a performance including, but not limited to, the following activities: playing musical instruments, singing, dancing, acting, pantomiming, puppeteering, juggling, reciting, or creating visual art in its entirety. "Perform" shall not include: (1) the provision of personal services such as hair weaving or massage; (2) the application of substances to others' skin, including, but not limited to, paints, dyes, and inks; (3) the completion or other partial creation of visual art; (4) the creation of visual art which is mass produced or produced with limited variation or (5) the creation of handcrafts. This list of exclusions is not intended to be exhaustive.

(e) **Public Areas.** Sidewalks, parkways, playgrounds and all other public spaces located in the City.

(f) **Crescent Avenue.** Crescent Street between the northeasterly line of Whittley Avenue and the southeasterly line Clarissa Avenue. Crescent Avenue is divided into four performance areas: the

South Beach Performance area, the Center Performance area, and the Bank Performance area and the North Beach Performance area. The boundaries of each of these performance areas are delineated in Exhibit A.

(g) **Pebbly Beach Road/Cabrillo Mole Parkway.** The grass area northwest of the basketball courts along Pebbly Beach Road to the southwest side of Float 5 across from the Wet Spot Rentals, but excluding therefrom the semi-enclosed area containing the Veteran's Memorial exhibits.

(h) **Sculpture.** A three dimensional work of art which is created through shaping solid material such as wood, stone, clay or metal by carving, modeling, or similar methods.

(i) **Downtown Street Extension Areas.** The paved area along Sumner Avenue and Catalina Avenue between Crescent Street, southeasterly of the alley that runs northeast to southeast.

(j) **Visual Art.** Drawings and paintings, applied to paper, cardboard, canvas, or other similar medium through the use of brush, pastel, crayon, pencil, or other similar object, and sculptures.

Sec. 4-14.103 Rules and regulations.

(a) Notwithstanding any other provision of this Code, but subject also to Sections 4-14.104 and 4-14.105, no performer may perform:

(1) Within ten feet of any trolley stop or any designated taxi drop off/pick-up area;

(2) Within ten feet of any street corner or a marked pedestrian crosswalk;

(3) Within ten 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.

(b) No person may perform on Crescent Street, the Downtown Street Extension Areas, the South Beach Area, the North Beach Area, the Pebbly Beach Road/Cabrillo Mole Parkway or any public sidewalk without first obtaining a performance permit issued by the City pursuant to Section 4-14.104.

(c) A performer and the performer's equipment may not block or obstruct the free and safe movement of pedestrians. If a sufficient crowd gathers to observe a performer such that the passage of the public through a public area is blocked or obstructed, a police officer or fire official may disperse that portion of the crowd that is blocking or obstructing the passage of the public. If a performer cannot conduct a performance in a location without blocking or obstructing the passage of the public, a police officer or fire official may cause the performer to leave the location or require that the performer relocate his/her equipment, but shall not prevent the performer from occupying another location in compliance with this Chapter.

(d) A performer who performs for a charge shall obtain a business license and be subject to all applicable provisions of Title 3. A performer who performs without charge shall not be required to obtain a business license pursuant to Title 3.

(e) No performer shall construct, erect, or maintain any stage, platform, or similar structure for use during any performance unless the stage or platform:

(1) Is integral to the performance and the performance only takes place on the stage;

(2) Does not exceed four feet by four feet and one-quarter inch in height;

(3) Is removed from the public way when the performer is not performing;

(4) Has beveled edges.

(f) 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.

(g) No performer shall use any generator, wet cell battery with removable fill caps, or connect or maintain an electrical cord to an adjacent building or to a City power source.

(h) No performer shall utilize any speaker, microphone or mechanical amplification device that creates or causes sound to be louder than surrounding ambient sound at a distance of more than twenty-five (25') feet from the performer;

(i) No performer shall litter his or her performance site.

(j) No performer shall utilize or prevent the public from utilizing any public benches, waste receptacles, or other street furniture during the performance.

(k) No minor under the age of sixteen can perform unless the minor is at all times accompanied by a responsible adult eighteen 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/her possession at the time of the performance.

(l) No performer shall place any object on a public sidewalk which causes less than a four-foot contiguous sidewalk width being kept clear for pedestrian passage.

(m) No performer shall perform with more instruments, props, equipment, or other items than the performer can reasonably transport or remove at one time.

(n) No performer shall place his/her instruments, props, equipment, or other items on a public sidewalk, public street, or public right-of-way for more than one hour without performing in accordance with the provisions of this Chapter.

(o) No performer shall leave his/her instruments, props, equipment, merchandise, or other items unattended.

(p) No performer shall perform in contravention of the allowable noise levels established by Title 5, Chapter 13 of this Code.

(q) No performer shall block or obstruct a curb cut.

(r) No performer shall perform outside designated performance zones, as established by resolution of the City Council.

(s) No performer shall move more than six feet in any direction while performing.

Sec. 4-14.104 Performance Permit.

(a) To receive a performance permit, a person must complete and file with the City a

performance permit application on a form approved by the City. The applicant must provide the following information:

- (1) The applicant's name;
 - (2) The applicant's address;
 - (3) Proof of the identity of the applicant. This identification must contain a photograph of the applicant. Acceptable forms of identifications shall include, but not be limited to, a driver's license, student identification card, or passport;
 - (4) A detailed description of the nature of the act to be performed;
 - (5) A detailed description of any instrument(s) or prop(s) which will be used by the performer(s);
 - (6) A minor under the age of sixteen shall provide a copy of an entertainment work permit issued to the minor by the Department of Industrial Relations of the State of California and shall identify the responsible adult(s) who will be with the minor at all times that the minor is performing;
- (b) The performance permit will be issued annually commencing on January 1st of each calendar year;
- (c) Upon receipt of a written application for a performance permit, a performance permit shall be approved within three business days of the filing of a fully completed application, unless one of the following findings is made:
- (1) The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the application process;
 - (2) The application does not contain the information required by this Chapter;
 - (3) The applicant has not satisfied the requirements of this Chapter.
- (d) In addition to requiring compliance with all provisions of this Chapter, the City may condition the approval of a performance permit on the applicant's compliance with other provisions of the City's Municipal Code which are applicable to the performance.
- (e) The City may revoke or suspend a performance permit upon the commission of the second violation either of this Chapter or of permit conditions within a six-month period. In any such case, the permit holder shall have the right to appeal from a decision of the City to revoke or suspend any permit in accordance with Title 1, Chapter 4. A performer's permit may be suspended for up to four months. If the performance permit of any performer is suspended, no new permit shall be issued during the period of suspension.

Any revocation of a performer's permit shall be for six months unless the performer previously had a performance permit revoked and the new violations of this Chapter or permit conditions relate to public safety, in which case, the permit shall be revoked for twelve months. No new permit shall be issued during a revocation period. The City shall establish administrative guidelines to assist in the implementation of this Section.

(f) No application for a performance permit or the renewal thereof shall be accepted unless the application is accompanied by a payment of a nonrefundable, non-prorated annual fee in an amount to be set by resolution adopted by the City Council.

(g) The performance permit shall include a photograph of the performer, shall not be assignable or transferable, and shall contain the permit number of the applicant and the year in which the permit expires. Each performer in a group shall obtain his/her own separate performance permit.

(h) A replacement performance permit may be obtained upon payment of a nonrefundable fee in an amount to be set by resolution adopted by the City Council.

(i) A performer shall clearly display his or her permit while performing, and shall allow inspection of the permit by any City police or fire official on request.

(j) The City Council may by resolution adjust the noise limitations established in this Chapter during public holidays.

(k) When an applicant requests a performance permit application, the City shall also give the applicant a document which summarizes the rules and regulations concerning street performances in the City. This document may be, but is not required to be, a copy of this Chapter.

Sec. 4-14.105 Special Regulations for Crescent Street, Downtown Street Extension Areas, and Pebbly Beach Road/Cabrillo Mole Parkway.

In addition to the requirements of Sections 4-14.103 and 4-14.104, no performer shall perform in the Crescent Street, Downtown Street Extension Areas or the Pebbly Beach Road/Cabrillo Mole Parkway Area outside of an enclosed building in violation of the following requirements:

(a) Except as provided in subsection (q) of Section 4-14.103, no performer shall perform except during the following time periods:

(1) Ten a.m. to ten p.m. daily.

(b) No performer shall perform within sixty feet of any special event authorized by the City unless the special event encompasses one or more City blocks in which case the performance shall be conducted according to any administrative guidelines which shall be

adopted by the City.

(c) No performer shall:

(1) Perform on Crescent Street, the Downtown Street Extension Areas, the Pebbly Beach Road/Cabrillo Mole Parkway Area, the South Beach Area, and the North Beach Area in any specific location or within fifty feet of that location as measured in a northeast/southeast direction, for more than two hours in any six hour period. The time required to set up and to remove any instruments, props, equipment, or other items shall be considered part of the performance for purposes of this subdivision and subdivision (2) of this subsection (c).

(2) Perform within fifty feet of any other performance.

Sec. 4-14.106 Assignment of Performance Locations.

A lottery or voucher system may be implemented to allocate performance locations and ensure that all performers participating therein have a fair and equal opportunity to perform or obtain preferred performance locations. Administrative guidelines may be established to specify additional requirements, including the conduct and timing of the lottery or voucher system, the maximum time period and location in advance of the lottery or voucher distribution that the performers can line up, and the duration of the permit, consistent with the provisions of this Chapter and any other relevant provisions of the Municipal Code.

Sec. 4-14.107 Penalties.

The following penalties shall be established for violations of this Chapter:

(a) Except as provided in subsections (b) of this Section, any person violating this Chapter shall be guilty of an infraction, which shall be punishable by a fine of not less than one hundred dollars, but not exceeding two hundred fifty dollars per violation.

(b) Any person performing without a performance permit as required by Section 4-414.103 shall be guilty of an infraction which shall be punishable by a fine not exceeding two hundred fifty dollars, or, following three infractions within a twelve month period, the prosecutor, in his discretion, may charge a violation as a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars per violation, or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment.

4-14.108. Exemptions.

This Chapter shall not apply to:

(a) Activities approved under a film permit.

(b) Any approved participant in any special event authorized by the City Council.

PASSED, APPROVED and ADOPTED this day of , 2009.

AYES:

NOES:

ABSTAIN:

Bob Kennedy, Mayor

ATTEST:

Denise Radde, City Clerk