



Asbury Park, New Jersey
ORDINANCE NO. 2019-1

**AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 4-15, ENTITLED
“STREET PERFORMERS,” OF CHAPTER IV, “GENERAL ORDINANCES,” OF THE
“CODE OF THE CITY OF ASBURY PARK, NEW JERSEY.”**

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Mayor and City Council of the City of Asbury Park (the “City”), in the County of Monmouth and State of New Jersey, that Chapter IV, “General Licenses,” Section 4-15 thereof, entitled “Street Performers,” of the “Code of the City of Asbury Park, New Jersey,” is hereby amended and supplemented in the following respects (deletions are shown with ~~strikeout~~; additions are shown with underline):

CHAPTER IV

4-15 STREET PERFORMERS.

4-15.1 Definition.

As used in this section:

Street performer shall mean any clown, mime, musician, magician, or any other individual engaged in an artistic expressive activity in a public area for the purpose of entertaining the general public.

4-15.2 Permit Required; Fees; Background Check; Term; Appeal.

a. Permit Required. No street performer shall conduct his or her performance in the public areas of the City of Asbury Park, including the boardwalk, without first obtaining a permit from the City Clerk. Such permits shall be issued annually, on a first-come-first-served basis, upon submission of an application in the form prescribed by the City Clerk, presentation of a valid form of identification and payment of a permit fee of fifty (\$50.00) dollars compliance with the provisions of below regarding payment of the required annual application fee and submission to a criminal history background check which produces satisfactory results. ~~Such permits shall be valid only during the year in which they are issued.~~

b. Application Fee. The application must be accompanied by a nonrefundable application fee of twenty-five dollars (\$25.00) to cover the cost of and processing of the application.

c. Background Check; Disqualifying History. Every applicant for a permit pursuant to this Section shall be fingerprinted by Sagem Morpho, Inc. To provide for a timely and efficient criminal history background review, the City of Asbury Park will be utilizing the state-police-coordinated, non-criminal-justice fingerprinting process known as “Live Scan.” The State of New Jersey has contracted with a vendor, Sagem Morpho, Inc., to perform this service. The

company has established permanent sites throughout the state as well as several mobile units available to meet its contractual agreement. Sagem Morpho, Inc. charges a fee for the fingerprinting for which the applicant will be responsible. There will be an additional fee of twenty dollars (\$20.00) payable to the City of Asbury Park, for the processing of the fingerprint documentation required by Sagem Morpho, Inc. The Chief of Police or his designee shall conduct a criminal history background check upon any such applicant to determine whether the applicant has been convicted, whether by trier of fact or a plea of guilty, under the laws of the State of New Jersey of an offense involving dishonesty or of a crime of the third degree or above, pursuant to New Jersey law, or under the laws of another state of the United States of an offense or a crime which, if committed in the State of New Jersey, would be such an offense or crime. No permit shall be issued to any applicant found to have a criminal history of conviction of such offenses or crimes.

d. Fees. All fees referenced above shall be non-negotiable and non-refundable.

e. Term. All permits issued pursuant to this Section shall be valid only during the year in which they are issued.

f. Appeals of Permit Disqualification or Permit Revocation/Suspension.

1. Any applicant who feels aggrieved as a result of the denial of a street performer permit due to the results of the criminal history background check, as referenced above, or whose street performer permit has been suspended or revoked, or who has been the subject of any other adverse action taken by the City or its representatives, may file an appeal to the City Manager or the City Manager's assigned designee in accordance with the provisions set forth below.

2. The appeal must be taken, in writing, within ten (10) days from the date of the notice of the denial, suspension, revocation, decision, ruling or action. A letter stating the desire to appeal shall suffice.

3. Upon the filing of an appeal, the City Manager or his/her designee shall hold a hearing on the appeal as soon as practicable, providing reasonable advance notice of the time and date of the hearing to the appellant. At the hearing, the appellant shall be permitted to provide information and/or testimony in support of his/her position.

4. If the appeal regards disqualification due to the results of the criminal history background check, the City Manager or his/her designee shall be permitted to consider whether the applicant has affirmatively demonstrated clear and convincing evidence of his or her rehabilitation. In determining whether an applicant has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(a) the nature and seriousness of the offense(s);

(b) the circumstances under which the offense(s) occurred;

(c) the date(s) of the offense(s);

(d) the age of the person when the offense(s) was/were committed;

(e) whether the offense(s) represented an isolated or repeated incident;

(f) any evidence of rehabilitation; and

(g) any other factors which are relevant in the discretion of the City Manager or his/her designee.

5. As part of the hearing, the City Manager or his/her designee may request guidance from any relevant City staff or legal consultant(s) to make an informed decision on the appeal.

6. In all cases of appeal, the determination of the City Manager or his/her designee shall be guided by the best interests of the health, safety and welfare of the public.

7. At the conclusion of the hearing, the City Manager or his/her designee may affirm, modify or reverse the action of the City, and shall advise the appellant in writing of the decision within seven (7) days of the conclusion of the hearing.

4-15.3 Performance Regulations.

This section regulates the manner in which street performers may perform in the public areas of the City of Asbury Park, including the boardwalk.

a. A street performer shall conduct his or her performance in a place and manner so as to not restrict the flow of vehicular or pedestrian traffic. If performing upon the boardwalk, a performer shall be located on the eastern side of the boardwalk and shall not be located within twenty-five (25) feet of any entrance or exit to the beach or boardwalk, or within twenty-five (25) feet of any business or public building.

b. Where two (2) or more street performers are present in a common area, they shall be spaced no less than fifty (50) feet apart, unless engaged in a joint performance. If a performer is located within fifty (50) feet of another performer, or cannot conduct a performance in a location without blocking the passage of the public, the street performer shall leave the location upon notification by a Police Officer or other City official. The performer may then move his or her performance to another location in conformance with this section.

c. Street performers shall not remain in the same location for more than three (3) hours. At the conclusion of a three (3) hour period, and at the request of any law enforcement officer of the City of Asbury Park, street performers shall move to a new location that is a minimum distance of one hundred (100) feet from the immediately prior location.

d. Street performers may conduct performances between the hours of 9:00 a.m. and 10:00 p.m.

e. Street performances are prohibited on the boardwalk during the July 4th weekend due to the extremely high volume of pedestrian traffic and other activities historically encountered at the beachfront at such times.

f. Notwithstanding the provisions of paragraph c. above, the City Council may by a majority vote designate other times or dates during which performances may be restricted or prohibited in order to protect the public interest.

g. No street performer may sell any merchandise without first obtaining a mercantile license for same pursuant to Section 4-1 of the City Code or, if the proposed sales are intended to

take place within the "boardwalk vending area" (Section 4-14, as defined in Ordinance No. 2979, adopted on May 18, 2011, or as defined in any successor Ordinance adopted thereafter), obtaining a permit to engage in such boardwalk/beachfront vending activities in accordance with the requirements set forth in Section 4-14, or in accordance with the requirements set forth in any successor ordinance adopted thereafter.

h. No street performer shall include any activity which is inimical to the health, safety and welfare of the general public. Examples include but are not limited to activities involving fire, flammable liquids, knives or swords, or language or conduct that is likely to incite violence or a riot.

i. All street performers shall be required to have their permit on display in public view at the site of the street performance at all times.

j. No street performer shall utilize amplifiers for music or other sounds without first receiving appropriate approval(s) from the City's Special Events Committee.

4-15.4 Enforcement.

The provisions set forth in this section may be enforced by the City Manager or his designee, the City Clerk or any member of the City's Police Department.

4-15.5 Violations and Penalties.

a. Any person violating or failing to comply with any other provision of this section shall, upon conviction thereof, be liable to the penalties stated in Chapter I, Section 1-5 of the City Code. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

b. The City Council and/or the City Manager shall have the authority to suspend or revoke a street performer permit upon a finding of violation of any rule or ordinance or other law, or upon good cause shown, in furtherance of the best interests of the health, safety and welfare of the public.

c. The violation of any provision of this section shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

BE IT FURTHER ORDAINED, that all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

BE IT FURTHER ORDAINED, that the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon final passage and publication in accordance with the law, following the required twenty (20) day period after adoption, as set forth in N.J.S.A. 40:69A-181(b).

I, CINDY A. DYE, City Clerk of the City of Asbury Park, Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of ORDINANCE NO. 2019-1 which was finally adopted by the City Council at a meeting held on the 23rd day of January, 2019

 CINDY A. DYE
 CITY CLERK

✓ Vote Record - Ordinance 2019-1						
			Yes/Aye	No/Nay	Abstain	Absent
<input type="checkbox"/> Adopted	Eileen Chapman	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Adopted as Amended	Yvonne Clayton	Voter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Defeated	Jesse Kendle	Seconder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Tabled	Amy Quinn	Mover	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Withdrawn	John Moor	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Introduced	Next: 1/23/19 7:00 PM					