



A BILL FOR AN ORDINANCE

RELATING TO STREET PERFORMERS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and intent. The primary purpose of public sidewalks in the City and County of Honolulu is to provide for safe and convenient passage of pedestrian traffic. In Waikiki, pedestrian traffic on public sidewalks is particularly heavy due to the presence of thousands of tourists who visit Oahu each year and stay at hotels in the area. Also using the sidewalks of Waikiki and adding to the congestion thereof, are Waikiki residents, employees of Waikiki businesses, and the many Oahu residents who frequent Waikiki businesses, attend conferences and special events at Waikiki hotels, and use Waikiki beaches and parks for recreational activities such as swimming, surfing, picnicking, beach-going, etc. The presence of a continuous flow of pedestrians on the sidewalks in Waikiki has also attracted solicitors, handbillers, and street performers, all of whom exacerbate sidewalk congestion and diminish the ambience of Waikiki as a safe and pleasant area for tourists and residents alike.

In order to ensure the safety of pedestrians using the public sidewalks in Waikiki, and preserve the ambience of this internationally renowned visitor destination area, the Council enacted Ordinances 97-66 and 99-52 (codified as Chapter 29, Article 13, Revised Ordinances of Honolulu 1990, as amended (ROH)), to regulate animal solicitations in Waikiki, and Ordinance 98-12 to regulate handbilling in Waikiki. Additionally, the Council enacted Ordinances 89-14, 98-66, and 02-10 (consolidated and codified as Chapter 29, Article 11, ROH) addressing the proliferation of publication dispensing devices on the sidewalks of Waikiki by restricting the distribution of publications from fixed devices on those sidewalks to City-constructed publication dispensing rack enclosures.

The Council has also enacted Chapter 29, Article 6, ROH (the "peddling ordinance"), prohibiting, among other things, peddling in any public place in Waikiki, even by persons with a peddling license. (Section 29-6.2, ROH.) The term "peddling" is defined in Section 29-1.1, ROH, to include the sale or offer for sale of "goods, wares, merchandise, foodstuffs, or other kinds of property or services." Thus, most of the activities of street performers, if engaged in for money, would be considered "peddling," and prohibited on Waikiki sidewalks. The validity of the City's peddling ordinance was upheld in the face of a First Amendment challenge in One World One Family Now v. City and County of Honolulu, 76 F.3d 1009 (9th Cir. 1996). Although some Waikiki street performers may be performing without intent of remuneration, many may be circumventing the peddling ordinance by accepting "donations," rather than payment for their performances or for artwork or other tangible items resulting from their performances.



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In response to increasing concerns about congested Waikiki sidewalks and the ability of pedestrians to safely traverse the sidewalks because of the proliferation of activities occurring on these sidewalks, the Waikiki Business Improvement District Association (WBIDA) commissioned a study by the University of Hawaii, Department of Urban and Regional Planning, to examine pedestrian conditions in selected areas of Waikiki during the summer of 2005, a peak visitation period. The results of this study indicate that Kalakaua Avenue sidewalks, between Lewers Street and Uluniu Avenue, have the highest level of pedestrian activity in Waikiki. The study further found that sidewalk activities -- in particular street performers -- have a degrading effect on the pedestrian level of service and comfort and significantly diminish sidewalk capacity and pedestrian flow in the area. The study notes that when pedestrian level of service is degraded too severely, pedestrians may step into roadways, and such actions put both pedestrians and motorists at risk.

The Council finds that there is an overriding public purpose in promoting safe walking and pedestrian movements on the public sidewalks of Waikiki, most particularly those sidewalks identified as the most heavily pedestrian-congested in Waikiki. According to information received from the Honolulu Police Department, it is their experience that 7 p.m. to 10 p.m. are the peak pedestrian hours in Waikiki. The Council seeks by this ordinance to regulate activities on these sidewalks during these peak hours, to the extent necessary, to enable pedestrians to safely and conveniently traverse them.

The Council's intent is to: (1) ensure pedestrian safety on the sidewalks along Kalakaua Avenue, between Lewers Street and Uluniu Avenue (the "restricted area") during the peak pedestrian hours of 7 p.m. to 10 p.m. (the "restricted time period"), when such performances may obstruct the heavy flow of pedestrian and vehicular traffic; (2) preserve the aesthetics and ambience of Waikiki; (3) prevent persons inside stores, offices, residences, and hotels in Waikiki from being disturbed by unduly noisy performances; and (4) establish conditions on performances that ensure that they do not unduly interfere with pedestrian and vehicular ingress and egress and safe pedestrian transit. The Council finds these governmental interests to be compelling.

The Council has, in enacting this ordinance, tried to protect, to the extent possible, the First Amendment rights of the performers, while ensuring the safety of the general public. The provisions of this ordinance establish content neutral and reasonable time, place, and manner restrictions on the sidewalk activities of street performers that are narrowly tailored to serve the above-enumerated compelling government interests. The Council has not prohibited street performances generally on the sidewalks of Waikiki, but only in those areas where the performances pose the



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greatest threat to public safety and during those time periods associated with the highest pedestrian traffic volumes.

The Council also finds that there are ample alternative venues for street performances in Waikiki, other than the sidewalks of the restricted area during the restricted time period. First, street performers are not prohibited from performing on other public sidewalks in Waikiki, even during the restricted time period, so long as they are not impeding pedestrian traffic and complying with certain other conditions. Second, they may perform anytime before 7 p.m. and after 10 p.m., even in the restricted area. Furthermore, they are permitted to perform in public parks in Waikiki. Finally, such performances are not prohibited on private property abutting public sidewalks to the extent authorized by the private property owner or lessee.

SECTION 2. Chapter 29, Revised Ordinances of Honolulu 1990, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. Performing on Public Sidewalks in the Waikiki Special District

Sec. 29-__1 Definitions.

As used in this article, unless the context requires otherwise:

"Perform" or "performing" means the following activities conducted in a manner intended to attract the attention of the general public: singing, rapping, signing, dancing, miming, juggling, puppeteering, magic, painting, animal performances, animal exhibitions, acting, creating tangible art, playing music, including drumming and other percussing, or any similar act or demonstration.

"Performer" means one or more persons performing singly or as a single group or unit and engaged in any of the activities identified under the definition of "perform" or any combination of such activities.

"Public sidewalk" means any publicly owned or maintained "sidewalk" as that term is defined in Section 29-1.1.

"Street corner" means a "street corner area" as described in Section 29-7.4(b)(2).

"Tangible art" includes, but is not limited to paintings, sketches, drawings, etchings, tattoos, sculptures and pottery. The term does not include photographs or videotapes.



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"Waikiki special district" or "Waikiki" means the Waikiki special district as described in Section 21-9.80-2.

Sec 29-__2 Performing on public sidewalks in Waikiki.

Performing may take place at all times on public sidewalks in Waikiki, except that no performing may take place:

- (1) Between the hours of 7 p.m. to 10 p.m. daily on the public sidewalks along Kalakaua Avenue between Lewers Street and Uluniu Avenue;
- (2) In the areas where performing is prohibited by Section 29-__3; or
- (3) In violation of the conditions set forth in Section 29-__3.

Sec. 29-__3 Conditions for performing.

The following conditions shall apply to performers or groups of performers performing on a public sidewalk in Waikiki. Such performers shall not:

- (a) Perform in a manner that blocks or obstructs pedestrian movement on any public sidewalk or crosswalk. Obstruction of a public sidewalk may be evidenced by such indicia as the occupation by the performer of an area of sidewalk that either (1) leaves a space for pedestrian through traffic that is less than four feet wide where the sidewalk width is less than eight feet; or (2) constitutes more than half of the available sidewalk width where the sidewalk width is eight feet or more;
- (b) Block the entrance to or exit from a business establishment on private property, unless the performer has obtained and is in possession of the written consent of the owner or operator of the private property or the designated agent of the owner or operator;
- (c) Perform on the portion of a public sidewalk adjacent to any area designated as a bus stop or within 10 feet of either end of the bus stop. In areas where the length of the bus stop is not clearly identified, the front of the bus stop begins at the bus stop sign and the bus stop extends 50 feet back from the bus stop sign;
- (d) Perform within any street corner;
- (e) Perform within a midblock crosswalk area, as defined in Article 7, or on any portion of a public sidewalk crossed by a public or private driveway or within 10 feet of either side of the driveway;



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- (f) Play, use, or operate any radio, tape recorder, cassette, compact disc player, or other machine or device for reproducing sound in violation of Chapter 41, Article 31 or any sound or voice amplifying device in the performance;
- (g) Erect or use any chair, stage, platform, canopy, table, umbrella, tent, cart, or any other similar structure or device that interferes with pedestrian movement for a performance on any public sidewalk;
- (h) Perform, during a special event for which the appropriate city permit has been obtained by the event organizer, on the public sidewalk abutting a roadway on which, or on a public sidewalk on which, the special event is being held, except pursuant to such permit;
- (i) Use any generator, wet cell battery, or other power source that poses a fire or public safety hazard. No performer shall, while performing, connect an electrical cord to any building or to a city power source;
- (j) Use fire, any flammable liquid, any firearm or replica of a firearm in any performance;
- (k) Engage in any activity that uses:
 - (1) Any public street furniture, including but not limited to publication dispensing rack enclosures, planters and benches;
 - (2) Any traffic control sign, pole, or device; or
 - (3) Any tree, shrub, or landscaping in the public sidewalk area, in the performance, or as a prop for the performance or for the promotion of the performance; or
- (l) Store any unnecessary personal item on the public sidewalk during the performance. "Unnecessary personal item" means any item under the ownership or possession of the performer that is not necessary for: (1) the performer to conduct the performance; (2) the performer to store or transport equipment or paraphernalia for the performance; or (3) use by a physically disabled performer to travel on the public sidewalk.



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Sec. 29-__4 Exclusions.

The provisions of this article shall not apply to persons peddling pursuant to a peddler's license issued under the provisions of Article 6 of this chapter. Such persons shall be subject to regulation under that article.

Sec. 29-__5 Violations.

Any person violating any provision of this article shall, without possibility of suspension, upon conviction be punished as follows:

- (1) By a fine of \$100 if the violation did not occur within two years of the occurrence of a previous violation of this article by the person;
- (2) By a fine of \$250 if the violation occurred within two years of the occurrence of one previous violation of this article by the person; or
- (3) By a fine of not less than \$500 nor more than \$1,000, imprisonment not exceeding 30 days, or both, if the violation occurred within two years of the occurrence of two or more previous violations of this article by the person.

Sec. 29-__6 Enforcement.

- (a) If a sufficient crowd gathers to observe performers performing such that Section 29-__3(a) or (b) is violated, a police officer may order the dispersal of that portion of the crowd that is blocking the public sidewalk, crosswalk, or the entrance to or exit from a business establishment. The failure to obey such an order is a violation of this article.
- (b) Upon finding probable cause to believe that a violation of this article has occurred, any police officer may arrest or issue a summons and citation in compliance with Section 803-6(b), Hawaii Revised Statutes, to the person believed to have violated this article.

Sec. 29-__7 Severability.

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



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Sec. 29-___.8 Safety provision.

The provisions of this article may be amended at any time to include or remove any public sidewalks if the council finds that it is necessary to ensure the safety of pedestrians."

SECTION 3. This ordinance shall take effect upon approval.

INTRODUCED BY:

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DATE OF INTRODUCTION:

November 3, 2005
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2005.

MUFU HANNEMANN, Mayor
City and County of Honolulu
(OCS/111605/ct)