

December 4, 2006

Date

RESOLUTION APPROVING PERMANENT EXCEPTION TO
CITY OF DES MOINES MUNICIPAL CODE CHAPTER 102, DIVISION 2,
(SECTIONS 102-486 THROUGH 102-493) TO
AUTHORIZE STREET PERFORMERS WITHOUT
OBTAINING AN ENTERTAINMENT DISTRICT LICENSE

WHEREAS, Sections 102-486 and 102-487 of the Municipal Code of the City of Des Moines provide in relevant part as follows:

"...*Entertainment district* means a specifically identified area or zone of the city, other than residential, which is composed of a group or organization of businesses such as restaurants and bars and shall allow the district to offer food, nonalcoholic beverages, merchandise or entertainment on a portion of the public sidewalk. The district may allow associated signage, planters, flowerpots, artwork, or historic markers or plaques on a portion of the public sidewalk within the entertainment district except the public sidewalk may not be obstructed beyond the portion needed for two directional pedestrian traffic.

Sec. 102-487. Required.

No person, group, or organization shall use a portion of the public sidewalk, except where otherwise authorized by ordinance or council resolution, for the sale of food, beverage, merchandise, or any other wares or for the purpose of entertainment without an entertainment district license as provided in this division."

WHEREAS, the requirements for obtaining an entertainment district license as set out in Municipal Code Section 102-488 are onerous and prohibitively expensive when applied to street performers; and

WHEREAS, in order to encourage and permit street performers in public areas, and pursuant to Municipal Code of the City of Des Moines Section 102-487, to exempt street performers from the application of Municipal Code Chapter 102, Division 2 (Sections 102-486 through 102-493) concerning entertainment district licenses, the Des Moines Music Commission has adopted the attached resolution regulating street performers; and

WHEREAS, ON August 21, 2006 pursuant to Roll Call No. 06-1710 (Council Communication No. 06-520) the City Council approved by way of

★ **Roll Call Number**

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resolution an exception to City of Des Moines Municipal Code Chapter 102, Division 2 (Sections 102-486 through 102-493) by implementing the attached Des Moines Music Commission Resolution Regulating Street Performers on a three-month trial basis. The August 21, 2006 resolution contemplated that after evaluation of the City's experience under the exception, the Music Commission would return to the Council with a recommendation that the exception be made permanent; and

WHEREAS, as of the date of this resolution neither the Police Department, Clerk's Office, Department of Community Development, nor any other department has received a complaint related to the exception of street performers from the requirement that they obtain an entertainment district permit as set forth in the August 21, 2006 City Council Resolution or the Des Moines Music Commission Resolution Regulating Street Performers.

NOW, THEREFORE, BE IT RESOLVED that the attached Des Moines Music Commission Resolution Regulating Street Performers is hereby approved and adopted and that street performers as defined in the Music Commission Resolution are hereby exempt from the application of Municipal Code Chapter 102, Division 2 (Sections 102-486 through 102-493) concerning entertainment district licenses.

APPROVED AS TO FORM:



Michael F. Kelley
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
TOTAL				
MOTION CARRIED	APPROVED			

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

**DES MOINES MUSIC COMMISSION RESOLUTION
REGULATING STREET PERFORMERS**

Section 1. Purpose.

The purpose of this resolution is to encourage and permit street performers in public areas.

Section 2. Definitions.

For the purpose of this resolution, the following words and phrases shall have the meanings hereinafter set forth except where such terms are used in context which clearly indicates to the contrary.

“Performer” includes, but is not limited to, one who engages in the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing or reciting.

“Public Areas” include sidewalks, parks, playgrounds and all other public ways located in the City of Des Moines, as appropriate.

Section 3. Permitted Performance Locations, Amplification and Hours.

(a) In outdoor public areas in the following zoning districts: C-1, C-1A, NPC, C-2, C-3A, C3-R, C-3B, D-R, and C-4, all as described in Municipal Code of the City of Des Moines Chapter 134, Divisions 17 through 23. Should the zoning ordinance be amended or new zoning districts be created which encompass the districts named herein, this ordinance will be effective in such areas until this resolution is amended.

(b) A performer may not block the passage of the public through a public area. If a crowd gathers to see or hear a performer such that the passage of the public through a public area is blocked, a police officer may disperse that portion of the crowd that is blocking the passage of the public. In the event the blocking of passage persists, said officer may cause the performer to relocate to a less congested area.

(c) It shall be unlawful for any performer to totally obstruct streets and sidewalks or to interrupt free passage along the same.

(d) Performers may not perform within an area for which a temporary street closing permit has been issued, or within 1000 feet around the perimeter of such area, without the consent of the permit holder.

(e) No performer or group may operate sound amplifying equipment or sound equipment as defined in Section 42-246 without first obtaining a permit pursuant to Section 42-257.

(f) Performers or groups in public areas as defined herein may perform only between the hours of 9:00 a.m. and 11:00 p.m.

Section 4. Acceptance of Contributions. Prohibition on Sales of Merchandise.

(a) A performer or group may accept contributions during the performance and such acceptance shall not constitute solicitation of funds under the provisions of Section 78-101.

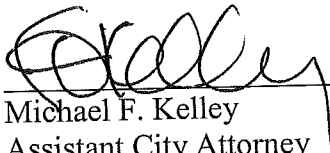
(b) The performance and acceptance of contributions, if such occur in a permitted area as provided in Section 3(a), will not constitute a sidewalk sale under the provisions of Section 102-521 et seq. A performer or group may not offer merchandise for sale to the public when such merchandise is displayed on a portion of, or entirely on a public sidewalk or public place not designed for vehicular traffic.

Section 5. Permits and Administrative Fee.

A street performer shall apply for a permit from the City Clerk which shall be issued upon payment of a \$5.00 fee. The permit shall state the holder's name and address.

This resolution shall become effective upon approval and recommendation by the City of Des Moines Music Commission and upon adoption by the City Council

APPROVED AS TO FORM:



Michael F. Kelley
Assistant City Attorney