

ORDINANCE NO. – 2016

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CHESTER, SPECIFICALLY CHAPTER 80 TITLED, “PEDDLING AND SOLICITING; HANDBILLS AND POSTERS”, TO CHANGE THE TITLE AND ADD A NEW ARTICLE III, COMPRISED OF SECTIONS 17 THROUGH 24, TITLED “BUSKING”, FOR THE REGULATION OF STREET PERFORMANCES.

BE IT ENACTED AND ORDAINED, and it is hereby enacted by authority of the Council of the Borough of West Chester, as follows:

SECTION 1. Chapter 80 of the Borough Code shall be re-titled, “Peddling and Soliciting; Handbills and Posters; Busking”.

SECTION 2. Chapter 80 of the Borough Code shall be amended to include a new article III, titled “Busking”, comprised of Sections 17 through 24, which shall provide as follows:

**ARTICLE III.
Busking**

§ 80-17. Purpose.

The Borough Council finds that the existence in the Borough of street performers provides a public amenity that enhances the character of the Borough. Council therefore seeks to encourage such performances to the extent that they do not interfere with the quiet enjoyment of residents and the ability of businesses to conduct their businesses uninterrupted. This section seeks to balance the interests of the performers with those of the residents and businesses of the Borough.

§ 80-18. Definitions.

BUSKER – a person who has obtained a permit pursuant to this article.

BUSKING (OR PERFORM) – includes, 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.

NOISE DISTURBANCE – any noise which endangers, would endanger or is likely to endanger, or injures, would injure or is likely to injure, the safety or health of humans or animals, annoys, would annoy or is likely to annoy, or disturbs, would disturb or is likely to disturb, a reasonable person of ordinary sensibilities; endangers, would endanger or is likely to endanger, or injures, would injure or is likely to injure, personal or real property; disturbs, would disturb or is likely to disturb, the peace; or creates, would create or is likely to create, a nuisance.

PERFORM – see busking.

PERFORMER – a person who has obtained a permit pursuant to this article.

PUBLIC AREAS – those public sidewalks, parks and playgrounds constituting “public space” and “public right-of-ways”, as those terms are defined in this article.

PUBLIC RIGHT-OF-WAY – any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

PUBLIC SERVICE FACILITIES – telephone, electric and cable television lines, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or utility service.

PUBLIC SPACE – any real property or structures thereon which are owned or controlled by a governmental entity.

§ 80-19. Prohibitions.

No person may perform or busk in a public area without a permit issued pursuant to this article.

§ 80-20. Permit.

- A. An individual seeking a permit to perform or conduct busking, as defined in this article, shall submit an application to the Borough on a form provided by the Borough, and pay the requisite fee, as established by

resolution of Council. Upon receipt of a complete application and payment of the applicable fee, the Borough Manager shall issue a busking permit, which shall be valid from the date on which it is issued, through the end of that same calendar year.

- B. A busking permit shall be non-transferable, and shall contain the permit number of the applicant and the year in which the permit is valid.
- C. Each member of any group of buskers who perform together shall be required to obtain individual permits (as though each member was performing individually).
- D. Upon issuing a permit, the Borough Manager shall also give the performer or busker a copy of this article.
- E. If a performer or busker loses his or her permit, replacement permits may be obtained for a fee, as established by resolution of Council.

§ 80-21. Display of Permit.

A performer or busker shall clearly display his or her permit while performing, and shall allow inspection of the permit by any authorized Borough employee, agent, or representative upon request.

§ 80-22. Permitted Performances.

- A. Performances or busking may take place in the following locations:
 - 1. In public areas, except within one hundred (100) feet of a school, library, or church while in session, a hospital at any time, and except public areas excluded by the Borough Council, the Director of Public Works, or the Chief of Police pursuant to this subsection;
 - 2. On private property, with the written permission of the owner or other person in control of such property, when such written permission has been submitted with the busking permit application; and

3. In public areas where an authorized street fair or public festival is being conducted, with the written permission of the sponsor of such fair or festival.
- B. Performances may take place at the following times:

Sunday through Thursday between 9:00 a.m. and 9:00 p.m.
Fridays and Saturdays between 9:00 a.m. and 11:00 p.m.
 - C. No performer, busker, or group of performers or buskers shall violate Chapter 73 (Noise Disturbance) of the Code of the Borough of West Chester.
 - D. No performer, busker, or group of performers or buskers shall operate, play or permit the operation of any musical instrument or similar device which produces, reproduces or amplifies sound in such a manner to cause a noise disturbance.
 - E. A performer, busker, or group of performers or buskers may not create an undue interference with the passage of the public through a public area. If a performer, busker, or group of performers or buskers attract a crowd sufficient to obstruct the public way, a Borough police officer may disperse the portion of the crowd that is creating the obstruction. Additionally, if a sizeable group of performers or buskers assemble in such a way and/or manner which obstructs the public way or causes a noise disturbance or public nuisance, a Borough police officer may disperse the group of performers or buskers to ensure the public health, safety and welfare.
 - F. A performer, busker, or group of performers or buskers may request contributions or money or property at a performance, provided that no sign requesting contributions shall exceed twelve (12) inches by eighteen (18) inches in size. Contributions may be received in any receptacle, such as an open musical instrument case, box or hat. Performers or buskers may offer for sale recordings of only their own work, in the form of records, cassettes, videotapes or compact discs ("Displays"). On sidewalks, displays must not obstruct handicap ramps, doorways, or windows. Performers or buskers shall not tape or post signs or posters on any public or private property or lean displays against any public or private property. Displays must not exceed more than 20% of the width of the sidewalk, and in any event shall not exceed fifteen (15) square feet in total.

- G. No performer or busker and/or the performance/busking itself shall not obstruct the entrance to any private residence or property, nor the entrance to any business during the hours that the business is open.

§ 80-23. Exclusion of Public Areas.

- A. A specific public area may be excluded from performances by the Borough in the following circumstances:
 - 1. Upon recommendation from the West Chester Police Department in the case of an emergency, or due to public health, safety and/or welfare concerns.
 - 2. Upon recommendation from the Director of Public Works in the case of scheduled or emergency repair work in the public right-of-way or any public service facility.
 - 3. Upon recommendation from the Director of Building and Housing in the case of construction or property maintenance code matter on private property adjacent to the performance site.

§ 80-24. Penalties.

- A. Suspension of Permit – The Borough Manager may suspend a permit for no more than thirty (30) days if: (a) a performer or busker is found to have knowingly provided false information in the application; or (b) a performer or busker has received two (2) notices of violation, verbal or written, of any provision of this article within the same calendar year.
- B. Revocation of Permit – The Borough Manager may revoke a permit for the remainder of the calendar year if a performer or busker has received three (3) notices of violation, verbal or written, of any provision of this article within the same calendar year.
- C. Before suspending or revoking a permit, the Borough Manager must hold a hearing, after ten (10) days written notice to the performer or busker, setting forth the facts constituting the basis for the proposed suspension or revocation.

- D. A performer or busker may not receive a permit unless all fines accrued for any violation of this article from previous year(s) have been paid.
- E. Any person who violates or permits the violation of any provision of this Chapter shall, upon conviction thereof in a summary proceeding brought before a District Justice, be guilty of a summary offense and shall be subject to the payment of a fine, not less than \$25 for the first offense, and no greater than \$1,000 for every subsequent offense, plus the costs of prosecution. Upon default of payment thereof, the defendant may be sentenced to imprisonment in the Chester County prison for a period of not more than 30 days. Each section or provision of this chapter that is violated shall constitute a separate offense and each day in which a violation of this Chapter is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed by the District Justice in the amounts stated hereinabove.
- F. The imposition of a penalty as provided herein shall not serve to prevent the abatement of any nuisance or to prevent the suspension or revocation of the permit held by any person who shall violate the provisions of this article, or any other law or ordinance while engaged in activities permitted under the provision of this article.

SECTION 3. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS _____ DAY OF _____, 2016.

ATTEST:

**COUNCIL FOR THE BOROUGH
OF WEST CHESTER**

BY:

Ellen B. Koopman, President

APPROVED THIS _____ DAY OF _____, 2016.

Carolyn T. Comitta, Mayor

NOTICE: At its regular meeting on _____, 2016, at 7:00 p.m., prevailing time, Council for the Borough of West Chester, Chester County, Pennsylvania will hold a public hearing at Borough Hall, 401 East Gay Street, West Chester, Pennsylvania to consider the adoption of, and if approved, Borough Council will adopt at its regular meeting an amendment to the Borough Code with the following title and summary:

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CHESTER, SPECIFICALLY CHAPTER 80 TITLED, "PEDDLING AND SOLICITING; HANDBILLS AND POSTERS", TO CHANGE THE TITLE AND ADD A NEW ARTICLE III, COMPRISED OF SECTIONS 17 THROUGH 24, TITLED "BUSKING", FOR THE REGULATION OF STREET PERFORMANCES.

The full text of the Ordinance is available for inspection without charge at the Borough of West Chester administrative offices, 401 East Gay Street, West Chester, Pennsylvania 19380, Monday through Friday from 8:30 a.m. to 5:00 p.m. A copy of the full text of the Ordinance may be obtained for a charge not greater than the cost thereof. In addition, a certified copy of the proposed Ordinance is also on file and available for inspection by members of the public at the offices of the Daily Local News, 250 Bradford Avenue, West Chester, PA and the Chester County Law Library, Chester County Justice Center, Suite 2400, 201 West Market Street, West Chester, Pennsylvania 19380-0989.

Borough Manager
Borough of West Chester