



ADMINISTRATIVE INSTRUCTION

SUBJECT: Notice of Violation Processing and Suspension/Revocation of Performance Permit **NUMBER:** II-4-9

EFFECTIVE DATE: Revised May 12, 2014

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I. Purpose

The purpose of this Administrative Instruction is to establish procedures for the interdepartmental processing of Notices of Violations issued under the authority of Chapter 6.112 of the Municipal Code by employees of the Santa Monica Police Department. These Instructions include procedures for the revocation or suspension of a street performance permit pursuant to SMMC Section 6.112.040(e).

II. Scope

This Administrative Instruction applies to all City Departments involved in the processing of Notice of Violations issued to street performers pursuant to SMMC Section 6.112.040(e) including the Police Department, the City Manager's Office, the Finance Department, and the City Attorney's Office.

III. Definitions

- A. Notice of Suspension/Revocation: A written notification from the Business License office informing a performer of his or her suspension or revocation.
- B. Notice of Violation: A written form produced by the Police Department to formally document violations of the Municipal Code or Street Performer Regulations. A notice of violation shall also include monetary administrative citations and any notice to appear issued by any authorized enforcement officer.
- C. Six Month Look-Back: The six month period preceding the date of a Notice of Violation that may be considered when determining if a permit can be suspended or revoked.
- D. Lost/Stolen Performance Permit Declaration: A written notification from the performer informing the Business License office that his or her permit has been lost or stolen.



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- E. Suspension: The City's ability to suspend a performer's permit to perform on the Third Street Promenade, the Santa Monica Pier and Transit Mall for the violation of the Santa Monica Municipal Code and/or Santa Monica Street Performance Administrative Regulations for a period of less than six months.
- F. Revocation: The City's ability to suspend a performer's permit to perform on the Third Street Promenade, the Santa Monica Pier and Transit Mall for the violation of the Santa Monica Municipal and/or Santa Monica Street Performance Administrative Regulations for a period of six months or one year.
- G. Notice of Violation Objection: A written objection from a performer on a form provided by the Business License office regarding a Notice of Violation issued by a law enforcement officer. This document will be reviewed at the point in which a permit is under review for suspension or revocation.

IV. Policy

The Street Performers Ordinance establishes reasonable time, place, and manner restrictions on street performance to the extent necessary to ensure the safety of performers, their audiences, and the general public, to preserve aesthetics in public spaces, to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes, and to preserve the ability of businesses to operate and conduct their business. It is the policy of the City to implement rules and regulations consistent with the Ordinance which establish objective criteria for the revocation or suspension of a performance permit.

As reflected in the standards established below, violations which affect the safety of the public are generally considered to be the most serious. The length of suspension or revocation generally corresponds to the seriousness of the violation(s) and the number of violations. As provided by SMMC Section 6.112.040, 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.



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V. Violation Categories

A performance permit shall be revoked or suspended in accordance with the following standards:

- Category I. Most Serious Violations (including the most serious public safety violations and material permit fraud)
- a. Section 3.74 of the SMMC [A performance on public property by a sex offender convicted of a sexual offense against a minor, in a manner to entice a minor.]
 - b. Section 6.112.040(e) [Providing a false or misleading, or fraudulent statement of fact in the performer permit application.]
 - c. Section 6.112.030(f) [Use of dangerous objects or activities]
- Category II. Other Public Safety Violations
- (a) Section 6.112.030(a)(1) [within 10 feet of bus stop]
 - (b) Section 6.112.030(a)(2) [within 10 feet of street corner/crosswalk]
 - (c) Section 6.112.030(a)(3) [within 10 feet of open business]
 - (d) Section 6.112.030(c) [obstruction of pedestrian access]
 - (e) Section 6.112.030(e) [with too large platform]
 - (f) Section 6.112.030(g) [use of power source or electrical cords attached to buildings]
 - (g) Section 6.112.030(k) [objects in 4 foot pedestrian area]
 - (h) Section 6.112.030(n) [leaving instruments, props, merchandise unattended]
 - (i) Section 6.112.030(p) [block or obstruct curb cut]
 - (j) Section 6.112.050(c)(6) [greater than 5 feet from buildings on Transit Mall]
 - (k) Section 6.112.050(c)(7) [within 20 feet of Third Street Promenade on Santa Monica Blvd.]
 - (l) Section 6.112.060(c)(7) [greater than 10 feet of north railing of Pier Center Performance Area]
 - (m) Section 6.112.060(c)(8) [greater than 10 feet of north or south railings of Pier Breezeway Performance Area]
 - (n) Violation of other Municipal Code provisions applicable to performance and related to safety, including, but not limited to: Sections 6.116.010(a)(1), 6.116.010(a)(2), 6.116.010(a)(3), 6.116.010(a)(4), 6.116.010(a)(5), 6.116.010(a)(6), 6.116.010(a)(7), 6.116.010(a)(8), 6.116.010(d), 6.116.010(e), 6.116.060(g), 6.116.070(a), 6.116.070(d), 6.116.070(e), or any successor provision thereto.



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Category III. Other Violations

- (a) Section 6.112.030(l) [too many instruments, props, merchandise]
- (b) Section 6.112.050(c)(5) [within 10 feet of a vendor with license agreement or 40 feet of others]
- (c) Section 6.112.060(c)(5) [within 50 feet of another performer in Pier General Performance Area]
- (d) Section 6.112.060(c)(5) [within 50 feet of another performer in Pier General Performance Area]
- (e) Section 6.112.060(c)(6) [within 35 feet of another performer in Pier Center and Breezeway Performance Areas]
- (f) Section 6.112.060(c)(9) [greater than 7.5 feet from stars on Pier]
- (g) Section 6.116.030(e) [use a speaker on a public sidewalk, street, or right-of-way unless it is placed on the ground and is no more than three feet in height.]
- (h) Any violation of any provision of Chapter 6.112 not otherwise specified in Category I and Category II above.
- (i) Any violation of any provision of Chapter 6.116 not otherwise specified in Category I and Category II above.
- (j) Any violation of the Santa Monica Street Performance Administrative Regulations.

VI. Standards for Suspension or Revocation

1. A performer shall be issued points based on the category of violation as outlined in the table below:

Violation	
Category	Points
I	12
II	3
III	2



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2. Suspension or revocation of the performers permit shall be imposed in accordance with the system outlined below:

	No Prior Revocation		One or More Prior Revocations	
	Number of Points within a Six Month Look Back Period	Suspension / Revocation Term in Months	Number of Public Safety Category I or II Violations after 1 or more previous Revocations within 3 years	Revocation Term in Months
Suspension	8 to 11	4		
Revocation	12 or more	6	1 or more	12

Suspension Example: The following combination of violations, outlined on the next page, in a six month look back period would meet the standards for suspension:

- Three (3) Category II violations (9 points)
- Four (4) Category III violations (8 points)
- Two (2) Category II and One (1) Category III Violations (8 points)
- One (1) Category II and Two (3) Category III Violations (9 points)
- Two (2) Category II and Two (2) Category III Violations (10 points)

3. If a performer's permit is suspended or revoked for a violation of Section 6.112.040(e), the permit shall not be reinstated until the false, misleading or fraudulent statement is corrected by the performer in writing.



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4. All violations issued during the previous six month look back period may be counted when determining if a performer meets the standards for suspension or revocation outlined in Section VI.2, even when a permit is already suspended or revoked. The six month look back period will be based on date of the most recent violation. For example, if a violation is issued on December 24, 2013, the look back period would begin on the December 24, 2013 through June 24, 2013.
5. Multiple suspensions or revocations are cumulative. For example, if a performer is suspended for four months, and during month two of the suspension he or she is suspended again for four months for new violations, the new four month suspension will begin following the last day of the first suspension, for a total of eight months.
6. A performer shall not be eligible for another performance permit for the duration of any suspension or revocation period commencing from the date the performer relinquishes his/her permit to the Business License Office. If a performance permit is lost or stolen, a performer must complete a *Lost/Stolen Performance Permit Declaration* form and submit it to the Business License office. The suspension will begin the date in which the form is submitted, or if mailed the date in which the envelope is U.S. Post Office postmarked.
7. After a revocation period, the performer may apply for a new permit through the Business License office. All provisions of the application process, including the payment of a new application fee apply to these new applications.



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VII. Procedures and Responsibilities

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A. The Police Department is responsible for issuing Notice of Violations. When a notice has been issued, a copy shall be kept by the Police Department. Upon receipt of a sufficient number of Notice of Violations for the same individual within the six month look back, the Police Department shall forward a memorandum requesting review of the permit, together with copies of all relevant Notice of Violations issued related to the current suspension recommendation, to the City's Business License office.

Police Department

B. A performer, upon receipt of a Notice of Violation, may provide the Business License office with a written objection. The objection must be submitted to the Business License office within 10 calendar days from the date of the violation. The Business License office shall keep all objections together with the performer's permit application. The Business License office shall, in consultation with the City Attorney's office, review the permit for possible suspension or revocation based on the standards in these Instructions. If it is determined based upon the information supplied by the Police Department and any objections provided by the performer that a permit should be revoked or suspended, the Business License office shall mail a certified Notice of Suspension/Revocation letter to the holder of the permit giving notice of this determination. The Business License office shall also send notice of the appeal rights established pursuant to Chapter 6.16 of the Santa Monica Municipal Code.

Business License
City Attorney



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C. If a holder of a permit appeals a suspension or revocation, the City Attorney's office shall provide for a hearing pursuant to Chapter 6.16 of the Santa Monica Municipal Code. The Hearing Examiner shall assess whether the permit was properly revoked or suspended in accordance with Chapter 6.112 and this Administrative Instruction. If during the pendency of a hearing, the holder of a permit commits additional violations of Chapter 6.112, or other Municipal Code provisions applicable to performance, including Chapter 6.116, which result in the permittee receiving notice of additional permit suspensions or revocation, these additional penalties can be reviewed at the same hearing set to review the initial suspension or revocation so long as the holder of the permit is given at least five days' notice that these additional penalties will be reviewed at the same hearing. If the Hearing Examiner upholds the imposition of multiple penalties, these penalties can run consecutively.

City Attorney

D. The decision to suspend or revoke a permit is stayed pending the decision of the Hearing Examiner. In all cases in which the Hearing Examiner upholds the decision to suspend or revoke the permit, the permit holder shall be notified by the City of the right to seek judicial review.

City Attorney



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VII. Procedures and Responsibilities

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E. The stay of the decision to suspend or revoke a permit expires ten (10) days after the Hearing Examiner issues his/her decision and a permit holder shall within that time period relinquish a revoked or suspended permit to the Business License office unless the performer seeks judicial review of the revocation or suspension pursuant to Code of Civil Procedure Section 1094.8. If the performer timely seeks judicial review, the stay shall remain in effect until the trial court renders its decision on the revocation/suspension. If the permit holder does not relinquish the permit in accordance with this Section and is observed performing, the City shall confiscate the permit. The permit will be forwarded to the Business License office

Business License

F. The City Attorney's office shall promptly notify the Business License office and the Police Department of any permit suspensions or revocations.

City Attorney

VIII. Forms

The Police Department shall have responsibility for the printing and maintenance of the Notice of Violation forms.

IX. Authorized By

A handwritten signature in black ink, appearing to read "Rod Gould".

Rod Gould
City Manager