

# **CITY of ALBUQUERQUE**

## **TWENTY FIFTH COUNCIL**

COUNCIL BILL NO.     0-23-79     ENACTMENT NO.     0-2023-019    

**SPONSORED BY: Tammy Fiebelkorn by request**

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### **ORDINANCE**

**REPEALING CHAPTER 7, ARTICLE 3 ROA 1994, THE ALBUQUERQUE FREE EXPRESSION AND PARADE ORDINANCE; CREATING THE ALBUQUERQUE FREE EXPRESSION AND SPECIAL EVENT PERMITTING ORDINANCE.**

**BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:**

**Section 1. REPEALER. Chapter 7, Article 3 ROA 1994 is hereby repealed.**

**Section 2. NEW MATERIAL. Chapter 7, Article 3 is hereby added to read as follows:**

**“§ 7-3-1 FINDINGS AND INTENT.**

**The City Council finds that the exercise of the right of public expression is a fundamental right essential to the democratic process. The City of Albuquerque encourages public expression that preserves City property and resources and maintains the public health, safety, and welfare. The City Council finds that, to facilitate and encourage public expression, the City must sometimes take precautions to protect City property and resources, ensure the free flow of pedestrian traffic on public streets and sidewalks, coordinate multiple uses of limited space on public property, and generally promote public health, safety, and welfare.**

**It is the intent of the City of Albuquerque to establish a permitting process for special events that impact important or substantial City interests, such as City facilities, services, or streets; public health, safety, or welfare; and public expression.**

**§ 7-3-2 SHORT TITLE.**

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1        This article shall be referred to as the “Albuquerque Free Expression and  
2        Special Event Permitting Ordinance” and may sometimes be referred to herein  
3        as “this article.”

4        **§ 7-3-3 DEFINITIONS.**

5        For purposes of this article, the following terms shall have the stated  
6        meaning unless the context clearly requires a different meaning:

7        **ADMINISTRATION.** The Mayor of the City of Albuquerque or the Mayor’s  
8        designee.

9        **ADMINISTRATIVE HEARING OFFICER.** The City Hearing Officer, as defined  
10       by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA  
11       1994), who conducts hearings of the propriety of a denial of a permit  
12       application under this article.

13       **APPLICANT.** Any person or agent who submits an application for a special  
14       event permit pursuant to this article.

15       **CITY.** The City of Albuquerque.

16       **CIVIC PLAZA.** The park more particularly described as the City property  
17       within the area bounded on the east by Third Street, on the north by Marquette  
18       Avenue, on the west by Fifth Street, and on the south by Tijeras Avenue.

19       **COMMERCIAL SOLICITATION.** Selling, offering for sale, selling and  
20       delivering, bartering, exchanging, peddling or hawking any goods, wares,  
21       food, merchandise, property either real or personal, tangible or intangible, or  
22       services.

23       **COMPLETED APPLICATION.** An application submitted by an applicant that  
24       contains all of the information needed by the Administration to review and act  
25       upon the application, including all special event information and applicant  
26       acknowledgments and any permits or permissions, agreements, insurance or  
27       fees required by City departments for conducting the special event.

28       **EMERGENCY MEDICAL SERVICES (EMS).** The sanctioned services  
29       rendered by New Mexico licensed providers in response to an individual’s  
30       immediate need for medical care to prevent loss of life or aggravation of  
31       physical or psychological illness or injury.

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1       **NATIONAL FIRE PROTECTION ASSOCIATION (NFPA).** The Association that  
2 develops, publishes, and disseminates consensus codes and standards  
3 intended to minimize the possibility and effects of fire and other risks.

4       **PARADE.** Any march, procession, or similar activity consisting of persons,  
5 animals, vehicles, or bicycles, or a combination thereof, upon the streets,  
6 parks, or other public grounds.

7       **PARK OR OPEN SPACE.**

8           (1) Lands and facilities owned or managed by the Parks and Recreation  
9 Department.

10          (2) Lands and facilities designated in the adopted Plan for Major Public  
11 Open Space and acquired by the City of Albuquerque.

12          (3) Any other lands so designated as Parks or Major Public Open Space  
13 at the time of acquisition or subsequently.

14       **PERMIT.** The document issued by the Administration that authorizes a  
15 person to conduct a special event.

16       **PERMITTEE.** An applicant who is issued a special event permit.

17       **PERSON.** Any individual, agent, firm, partnership, association, corporation,  
18 company, organization, or entity of any kind.

19       **PUBLIC ASSEMBLY.** Any meeting, parade, protest, march, vigil,  
20 demonstration, picket line, rally, or similar activity in a public forum for a  
21 common purpose, the primary purpose of which is the communication or  
22 expression of views or grievances.

23       **PUBLIC GROUNDS.** All public grounds owned and under the control of the  
24 City or any other governmental agency that are open to the use of the public.

25       **PUBLIC FORUM.** Places which by long tradition, by government fiat, or by  
26 policy and practice have been devoted to assembly and debate, including  
27 streets, sidewalks, and parks, or the current definition under Supreme Court of  
28 the United States precedent.

29       **PUBLIC SIDEWALK.** Any area or way the City or other public body or entity  
30 has set aside for the general public for purposes of pedestrian traffic.

31       **SPECIAL EVENT.** A special event is any organized public gathering,  
32 parade, public assembly, or similar activity that requires at least three

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1 prearranged City services, permits or other approvals from City departments,  
2 including, but not limited to, any of the following:

- 3 (1) Street closures;
- 4 (2) Barricades;
- 5 (3) Solid Waste services;
- 6 (4) Structures;
- 7 (5) Public parking arrangements not part of regular, day-to-day City  
8 operations;
- 9 (6) Electrical service arrangements not part of regular, day-to-day City  
10 operations;
- 11 (7) Food license;
- 12 (8) Noise permit;
- 13 (9) Liquor license;
- 14 (10) Police protection;
- 15 (11) Emergency medical services and/or fire protection; or
- 16 (12) Any other approval or service required by law, ordinance, rule or  
17 policy.

18 **SPECIAL EVENT PERMIT. A permit as required by this article.**

19 **SPECIAL EVENT PERMIT AREA. The physical area within which a special  
20 event is conducted.**

21 **STREET. Any place or way set aside or open to the general public for  
22 purposes of vehicular traffic, including any berm or shoulder parkway, right-  
23 of-way, or median strip thereof.**

24 **STRUCTURE. A structure shall mean and include props and displays (such  
25 as, but not limited to: crates, theaters, cages, and statues); furniture and  
26 furnishings (such as desks, chairs, tables, bookcases cabinets, platforms,  
27 podiums and lecterns); shelters (such as tents, boxes, inflatables, booths and  
28 other enclosures); wagons and carts; and all other similar types of property  
29 which might tend to harm City land or street areas.**

30 **§ 7-3-4 PERMIT REQUIRED.**

31 **No person shall conduct any special event without a permit.**

32 **§ 7-3-5 EXCEPTIONS.**

33 **Special event permits are not required for the following activities:**

1 (A) Activities for which the Administration issues a film permit;

2 (B) Funeral processions;

3 (C) Students going to and from school classes or participating in  
4 school sanctioned educational activities;

5 (D) A governmental agency, public body, or public entity; a City  
6 Department acting within the scope of its functions; or a person acting within  
7 the scope of the current, documented authority of a governmental agency,  
8 public body, public entity, or City Department;

9 (E) Public assemblies, unless it is expected that such activity will  
10 require at least three prearranged City services, permits or other approvals  
11 from City departments. If a public assembly begins on a sidewalk but attracts  
12 an unexpected number of participants such that the public assembly begins to  
13 occupy a portion of a street, the Albuquerque Police Department shall  
14 accommodate the activity by closing a segment, lane, or portion of the street if  
15 so doing will not jeopardize the participants or inhibit the flow of traffic on a  
16 major traffic route; provided, however, that the Albuquerque Police  
17 Department is authorized to limit the available portion of the street;

18 (F) The requirements of this article shall not obviate department  
19 requirements found in separate laws, rules and policies for events that do not  
20 qualify as special events, nor supersede City departmental requirements  
21 found in separate laws, rules, and policies for events that qualify as special  
22 events.

23 § 7-3-6 APPLICATION.

24 Applicants shall complete and sign a permit application as directed on  
25 forms provided by the Administration.

26 § 7-3-7 FEES AND INSURANCE.

27 (A) If the permit application is for the use of any City facility or public  
28 grounds, or if any City services will be required for the special event, the  
29 applicant shall pay, prior to the issuance of a permit, charges for the facility,  
30 public grounds, or services in accordance with any applicable schedule of  
31 fees provided by the affected department.

32 (B) The applicant shall be required to provide appropriate proof of  
33 insurance acceptable to the City of Albuquerque that will cover any loss or

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1 damage to persons or property. Applicants may be required to demonstrate  
2 the City of Albuquerque has been named as an additional insured party.

3 (C) An applicant shall be exempted from the requirement to obtain or  
4 provide proof of insurance if the applicant meets the criteria for an insurance  
5 waiver adopted by the City's Risk Management Division.

6 § 7-3-8 POLICE, FIRE, AND EMS PROTECTION.

7 (A) The Administration shall determine whether and to what extent  
8 dedicated police, fire, and EMS protection is necessary for the special event  
9 for traffic control and the public health, safety, and welfare. The  
10 Administration shall base this decision on the size, location, duration, time,  
11 and date of the event, the expected sale or service of alcoholic beverages, the  
12 number of streets and intersections blocked, and the need to detour or  
13 preempt public travel and use of the streets. The Administration, as advised  
14 by Albuquerque Fire Rescue, will determine the minimum number of required  
15 fire and EMS providers and their required service capabilities, including basic  
16 life support (BLS), advanced life support (ALS), fire suppression, and  
17 transport capabilities. The number of required fire and EMS providers and  
18 service capabilities will be based on guidelines set forth in the Federal  
19 Emergency Management Agency's IS:15 Special Events Contingency  
20 Planning, NFPA, and any relevant New Mexico state statute or administrative  
21 code. Except with regard to applications pertaining to public assembly special  
22 events or where unlawful, if stand-by of dedicated police, fire, or EMS  
23 protection is deemed necessary by the Administration, the Administration  
24 shall so inform the applicant. The applicant then shall have the duty to pay for  
25 the necessary police, fire, and EMS protection so long as the Administration  
26 determines it is possible for the event to take place without endangering the  
27 public health, safety, or welfare and that adequate police, fire, and EMS  
28 resources are available. The Administration's assessment of the quantity of  
29 spectators may be independent of representations by the applicant.

30 (B) Applicants wishing to engage in public assembly special events are  
31 not required to pay for any police, fire or EMS protection provided by the City.

32 § 7-3-9 GROUNDS FOR DENYING A PERMIT.

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1           **(A) The following constitute grounds for denying a permit under this**  
2 **article:**

3                   **(1) The event does not comply with the law, including this article;**

4                   **(2) The property sought to be used for the special event is closed**  
5 **or partially closed for construction, renovations, or other reasons;**

6                   **(3) The conduct of the special event will substantially interrupt**  
7 **the safe and orderly movement of pedestrian, vehicular, or other traffic**  
8 **contiguous to the special event’s route or location;**

9                   **(4) The conduct of the special event will require the diversion of**  
10 **so great a number of City police officers, firefighters, and EMS services to**  
11 **properly serve the line of movement and the areas contiguous thereto as to**  
12 **prevent normal police, fire, and EMS protection in the City;**

13                   **(5) The concentration of individuals, animals, and vehicles at**  
14 **assembly points of the special event will interfere with proper fire and police**  
15 **protection of, or EMS service to, areas contiguous to such assembly areas;**

16                   **(6) Except a public assembly, the conduct of the special event is**  
17 **likely to cause injury to persons or property or a public health threat, or the**  
18 **public assembly special event poses a clear and present danger to public**  
19 **health, safety, or welfare;**

20                   **(7) The special event is not scheduled to move from its point of**  
21 **origin to its point of termination expeditiously, unless the direction or**  
22 **movement of a public assembly special event is inextricably intertwined with**  
23 **the purpose of the public assembly;**

24                   **(8) Adequate sanitation and other required health facilities are**  
25 **not or will not be made available in or adjacent to any assembly areas;**

26                   **(9) There are not sufficient parking places near the site of the**  
27 **special event to accommodate the number of vehicles expected and**  
28 **alternative parking arrangements have not been planned;**

29                   **(10) The applicant has not secured any police, fire, security, and**  
30 **EMS protection required under this article;**

31                   **(11) A special event or other permit application for the same time**  
32 **and location has already been granted or has been received and will be**

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1 granted, and the location cannot accommodate all submitted special events at  
2 the same time;

3 (12) A special event or other permit application has already been  
4 granted or has been received and will be granted pertaining to the same or  
5 approximate time frame such that the police, fire, and EMS resources required  
6 for that prior special or other event are so great in combination with the  
7 subsequent proposed application that the resulting deployment of police, fire,  
8 and EMS services would have an immediate and adverse effect upon the  
9 participants or the public health, safety, or welfare, or property;

10 (13) The applicant has a history of, or demonstrates an inability  
11 or unwillingness to, conduct the special event pursuant to the terms and  
12 conditions of this article or other City permits or laws;

13 (14) The special event will require the exclusive use of a park or  
14 open space in a manner that will adversely impact upon the use or access to  
15 those areas by the general public for a prolonged period of time;

16 (15) The applicant has not obtained the timely approval of any  
17 other public body or entity within whose jurisdiction a portion of the special  
18 event will occur; or

19 (16) The special event is incompatible with the nature and  
20 traditional use of the City property requested.

21 (B) The Administration may give priority to special events sponsored by  
22 the City. The Administration may give priority to annual, semiannual, or other  
23 regularly scheduled or recurring special events. In deciding priority, the  
24 Administration may consider applicant compliance and previous special  
25 events.

26 (C) The Administration may condition any permit with reasonable  
27 requirements concerning the time, place or manner of holding such event as  
28 are necessary to coordinate multiple uses of public property, assure  
29 preservation of public property and public places, prevent dangerous,  
30 unlawful or impermissible uses, protect the safety of persons and property, or  
31 control vehicular and pedestrian traffic in and around the special event,  
32 provided that such requirements shall not be imposed in a manner that will



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1 unreasonably restrict expressive or other activity protected by the New Mexico  
2 or United States Constitutions.

3 § 7-3-10 NON-DISCRIMINATION.

4 The Administration shall consider each application upon its merits and  
5 shall not discriminate in granting or denying permits under this article based  
6 upon membership in protected class under federal or state anti-discrimination  
7 law or regulation or the City Human Rights Ordinance, §§ 11-3-1 et seq. ROA  
8 1994.

9 § 7-3-10 WAIVER.

10 Only the Chief Administrative Officer has the authority to grant waivers or  
11 partial waivers of the requirements of this article.

12 § 7-3-11 REVIEW AND ISSUANCE OF PERMIT.

13 (A) The Administration shall act promptly upon a timely completed  
14 application, but in no event later than ten (10) business days after a completed  
15 application is submitted. Except as otherwise provided in § 7-3-11(D) of this  
16 article, if a completed application is not submitted at least eleven (11) business  
17 days before the proposed special event, the permit application will not be  
18 timely and the Administration shall be under no obligation to review and act  
19 upon the application. The Administration shall, after due consideration of the  
20 date, time, and place of the special event, anticipated number of participants,  
21 and City services required in connection with the event, make the  
22 determination whether to review and act upon such permit application.

23 (B) Upon review of an application, the Administration shall issue a  
24 permit unless, from a consideration of the application and from such other  
25 information as may otherwise be obtained, one or more of the grounds listed  
26 in § 7-3-9 of this article for denying a permit exists.

27 (C) The Administration shall notify the applicant of any denial of a  
28 permit under this article and the reasons for the denial by email and either  
29 personal delivery or certified mail.

30 (D) With regard to public assembly special events that are in response  
31 to rapidly evolving news events, the Administration shall expedite review of  
32 completed applications.

33 § 7-3-12 ALTERNATIVE PERMIT.

1 (A) The Administration, in denying an application for a particular special  
2 event permit, may authorize the conduct of the special event at a date, time,  
3 location, or route different from that named by the applicant. An applicant  
4 desiring to accept an alternate permit shall, within five (5) business days after  
5 notice of the action of the Administration, submit a written notice of  
6 acceptance.

7 (B) An alternate special event permit shall conform to the requirements  
8 of, and shall have the effect of, a special event permit issued under this article.

9 § 7-3-13 APPEAL PROCEDURE.

10 Any applicant shall have the right to appeal the denial of a special event  
11 permit to an Administrative Hearing Officer. Appeals will be held in  
12 accordance with the provisions of the IHO Ordinance, ROA 1994, Chapter 2,  
13 Article 7, Part 8.

14 § 7-3-14 APPLICANT/PERMITTEE DUTIES.

15 (A) A permittee hereunder shall comply with all City permit directions  
16 and conditions and with all applicable laws, regulations, and City ordinances,  
17 rules, and policies.

18 (B) An applicant or permittee shall notify the Administration immediately  
19 of any changes made to the scope or characteristics of a special event.

20 (C) The permittee, permittee's agent, or other person designated by the  
21 permittee to lead such special event shall be present at the special event at all  
22 times.

23 (D) The permittee, permittee's agent or individual designated by the  
24 permittee to conduct and be responsible for the special event shall produce  
25 the special event permit immediately upon demand by an authorized City  
26 official at the special event and shall carry the special event permit upon their  
27 person during the special event or conspicuously display a copy of the permit  
28 at the special event venue in a method prescribed by the Administration.

29 § 7-3-15 PROHIBITIONS.

30 The following prohibitions shall apply to all special events:

31 (A) No person shall stage, present, or conduct any special event without  
32 first having obtained a permit as herein provided.

1 (B) No person shall conduct commercial solicitations on public streets,  
2 rights-of-way, or sidewalks within 150 feet of a special event area during a  
3 special event unless authorized by the permittee in accordance with the terms  
4 and conditions of a permit.

5 (C) No permittee, permittee agent, or other individual designated by the  
6 permittee to lead such special event shall knowingly fail to comply with any  
7 term or condition of a special event permit.

8 § 7-3-16 PUBLIC CONDUCT DURING SPECIAL EVENTS.

9 (A) No person shall drive a vehicle between the vehicles or persons  
10 comprising a special event when such vehicles or persons are in motion and  
11 are conspicuously recognizable as a special event.

12 (B) The Administration shall have the authority to prohibit or restrict the  
13 parking of vehicles along a street constituting a part of the route of a special  
14 event. The Administration shall post signs to that effect, and it shall be  
15 unlawful for any person to park or leave unattended any vehicle in such  
16 designated areas.

17 § 7-3-17 REVOCATION OF PERMIT.

18 The Administration shall have the authority to revoke a special event  
19 permit immediately upon breach of the permit terms or conditions or permittee  
20 duties, or when any grounds for denying a permit as set forth in this article are  
21 found to exist. Cause for revocation shall include, but not be limited to, the  
22 failure to obtain, or the revocation of, other permits required for the special  
23 event. The Administration may revoke a special event permit when a public  
24 emergency arises and the police, fire, or EMS resources required for that  
25 emergency are so great that the deployment of police, fire, and EMS services  
26 for the special event would have an immediate and adverse effect upon the  
27 participants or the public health, safety, or welfare. The Administration shall  
28 state the reasons in writing for the revocation. Revocation or lack of a special  
29 event permit, including a failure to show proof of a special event permit, shall  
30 be cause for the Administration to order immediate termination and dispersion  
31 of a special event.

32 § 7-3-99 PENALTY.

1 Any person violating any provision of this article shall be subject to the  
2 penalties provided in § 1-1-99 ROA 1994.”

3 Section 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
4 clause, word, or phrase of this ordinance is for any reason held to be invalid  
5 or unenforceable by any court of competent jurisdiction, such decision shall  
6 not affect the validity of the remaining provisions of this ordinance. The  
7 Council hereby declares that it would have passed this ordinance and each  
8 section, paragraph, sentence, clause, word, or phrase hereof irrespective of  
9 any provision being declared unconstitutional or otherwise invalid.

10 Section 4. COMPILATION. The amendments set forth in Sections 1 and 2  
11 above shall amend, be incorporated in, and compiled as part of the Revised  
12 Ordinances of Albuquerque, New Mexico, 1994.

13 Section 5. EFFECTIVE DATE. This ordinance shall take effect five (5) days  
14 after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 5<sup>th</sup> DAY OF June, 2023  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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7 \_\_\_\_\_  
8 **Pat Davis, President**  
9 **City Council**

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12 APPROVED THIS 20 DAY OF June, 2023  
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15 **Bill No. O-23-79**

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19 **Timothy M. Keller, Mayor**  
20 **City of Albuquerque**

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24 **ATTEST:**

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26 \_\_\_\_\_  
27 **Ethan Watson, City Clerk**

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