



Legislation Text

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CITY of ALBUQUERQUE
SIXTEENTH COUNCIL

NCIL BILL NO. F/S 0-05-109

ENACTMENT NO. _____

APPROVED BY: Brad Winter

ORDINANCE

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Adopting An Ordinance Pertaining To The Use Of Public Property For Marches, Demonstrations And Parades, Defining Terms, Requiring Permits, Establishing Hearing Procedures, Repealing Sections 7-3-1 Et Seq., ROA 1994, The Parade Ordinance.

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

SECTION 1. FINDINGS AND INTENT.

The City Council finds that the exercise of rights of public demonstration is a fundamental right essential to the democratic process. Responsible and safe public demonstration is encouraged in the City of Albuquerque. The City Council finds that, to facilitate and encourage public demonstration, the City must take reasonable precautions to protect participants, by-standers and property. The City Council finds that content neutral prior restraints concerning the time, place and manner of demonstrations are sometimes required to facilitate the demonstrations and promote public safety.

SECTION 2. SHORT TITLE.

This Ordinance shall be referred to as the "Albuquerque Free Expression and Parade Ordinance" or "AFEPO" and may sometimes be referred to herein as "this Ordinance."

SECTION 3. DEFINITIONS.

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

ADMINISTRATIVE HEARING OFFICER. The hearing officer appointed by the Chief Administrative Officer of the Mayor's Office to conduct an examination and hearing of the propriety of a denial of an application for a permit or other issues under this Ordinance.

APPLICANT. Any person who submits an application for a permit.

CHIEF OF POLICE. The Mayor's appointee in charge of the Albuquerque Police Department.

CITY. The City of Albuquerque.

CIVIC PLAZA. The park more particularly described as the city property within the area bounded on the east by Third Street, on the north by Marquette Avenue, on the west by Fifth Street, and on the south by Tijeras Avenue, and extending along the public walkway on the vacated area of Fourth Street, from Tijeras Avenue south to Central Avenue.

MAYOR. The Mayor of the City of Albuquerque or any city official with delegated authority from the Mayor.

PARADE. Any march, demonstration, procession or motorcade consisting of persons, animals, motorized vehicles or bicycles or a combination thereof upon the streets, parks or other public grounds within the City that could interfere with the normal flow or regulation of traffic upon the streets, parks or other public grounds.

PARADE OR PUBLIC ASSEMBLY PERMIT. A permit as required by this Ordinance.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

PROCESSION. Any assembly of three or more persons whose gathering is for the purpose of parading from one location to any other.

PUBLIC ASSEMBLY. Any meeting, demonstration, picket line, rally or gathering of more than twenty-five (25) persons for a common purpose as a result of prior planning that interferes with the normal flow or regulation of vehicular traffic or occupies any public area in a place open to the general public.

SIDEWALK. Any area or way set aside or open to the general public for purposes of pedestrian traffic.

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

TRADITIONAL PUBLIC FORUM. Public places historically associated with the free exercise

of expressive activities including but not limited to streets, sidewalks and parks.

SECTION 4. PERMIT REQUIRED.

No person shall engage in or conduct any parade or public assembly without a permit.

SECTION 5. EXCEPTIONS.

This Ordinance shall not apply to the following:

- A. Funeral processions;
- B. Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
- C. A governmental agency acting within the scope of its functions; and
- D. A public demonstration in a traditional public forum including but not limited to peaceful picketing directed against an employer whose activities come within the jurisdiction of the National Labor Relations Act or state or local labor laws and involved in a labor dispute.
- E. Permits are not required for protests or public assemblies on public property including but not limited to streets, parks, sidewalks or Civic Plaza unless it is known or reasonably probable that the public demonstration may necessitate the use or temporary closure of the streets in which case a permit is required. If a demonstration begins on the sidewalk but attracts an unexpected number of participants such that the demonstration begins to occupy a portion of the street, the Albuquerque Police Department shall accommodate the protest by closing a segment, lane or portion of the street where so doing will not jeopardize the demonstrators or unreasonably inhibit the flow of traffic on a major traffic route; however, the Albuquerque Police Department is authorized to limit the available portion of the street, where a segment, lane or portion of the street is capable of accommodating the demonstration.

SECTION 6. APPLICATION.

- A. A person seeking a parade or public assembly permit shall file a signed application with the Mayor on a form provided by the Mayor.
- B. For single non-recurring parades or public assemblies, an application for a permit shall be filed with the Mayor at least ten and not more than 180 days before the parade or public assembly is proposed to commence. The Mayor may waive the minimum ten day filing period and accept an application filed within a shorter period if, after due consideration of the date, time, place, and nature of the parade or public assembly, the anticipated number of participants, and the City services required in connection with the event, the Mayor determines that the waiver will not present a hazard

to public safety.

C. For parades or public assemblies held on a regular or recurring basis at the same location, an application for a permit covering all such parades or assemblies during that calendar year may be filed with the Mayor at least 60 and not more than 180 days before the date and time at which the first such parade or public assembly is proposed to commence. The Mayor may waive the minimum 60 day period after due consideration of the factors specified in subsection (B) above.

D. With regard to public demonstrations that will occupy or require closure of streets and are in response to rapidly evolving events, the Mayor may accept an application and expedite issuance of a Permit forthwith if doing so will not endanger the public or the protesters. If the Mayor refuses to expedite the permit process under this paragraph, the applicant may appeal to a hearing officer or seek equitable relief in a court of competent jurisdiction.

E. The application for a parade or public assembly permit shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct such parade or public assembly;

(2) The names, addresses and telephone numbers of the headquarters of the organization for which the parade or public assembly is to be conducted, if any, and the authorized and responsible heads of the organization;

(3) The requested date of the parade or public assembly;

(4) The route to be traveled, including the starting point and the termination point;

(5) The approximate number of persons, animals and vehicles that will constitute such parade or public assembly and the type of animals and description of the vehicles;

(6) The hours when such parade or public assembly will start and end;

(7) A statement as to whether the parade or public assembly will occupy all or only a portion of the width of the streets proposed to be traversed;

(8) The location by street of any assembly areas for such parade or public assembly;

(9) The time at which units of the parade or public assembly will begin to assemble at any such area;

(10) The intervals of space to be maintained between units of such parade or public assembly;

(11) If the parade or public assembly is designed to be held by, or on behalf of, any

~~person other than the applicant, the applicant for such permit shall file a letter from that person with~~

person other than the applicant, the applicant for such permit shall file a letter from that person with the Mayor authorizing the applicant to apply for the permit on his behalf;

(12) The type of public assembly including a description of activities planned during the event;

(13) A description of any sound amplification equipment and a description of the size of banners, signs, or other attention-getting devices not including the content of the communication on such sign, banner or attention getting device;

(14) The approximate number of participants not including spectators;

(15) The approximate number of spectators;

(16) A designation of any public facilities or equipment to be utilized; and

(17) Any additional information that the Mayor finds reasonably necessary to a fair determination of whether a permit should issue.

SECTION 7. FEES

A. A non-refundable fee of fifty dollars to cover administrative costs of processing the permit shall be paid to the City of Albuquerque by the applicant when the application is filed.

B. If the application is for the use of any City property or if any City services shall be required for the parade or public assembly, the applicant shall pay, prior to the issuance of a permit, charges for the property or services in accordance with a schedule of costs provided by the Mayor. The applicant may also be required to provide appropriate proof of insurance that will cover any loss or damage to persons or property. Persons engaging in public demonstrations for the sole purpose of public issue speech protected under the first amendment are not required to obtain or provide proof of insurance.

SECTION 8. POLICE PROTECTION

A. The Mayor shall determine whether and to what extent additional police protection is reasonably necessary for the parade or public assembly for traffic control and public safety. The Mayor shall base this decision on the size, location, duration, time and date of the event, the expected sale or service of alcoholic beverages, the number of streets and intersections blocked, and the need to detour or preempt citizen travel and use of the streets. The speech content of the event shall not be a factor in determining the amount of police protection required. If possible, without disruption of ordinary police services or compromise of public safety, regularly scheduled on-duty personnel will police the event. Except with regard to applications pertaining to pure public issue speech protected under the first amendment, if additional police protection is deemed necessary by

~~the Mayor, the Mayor shall so inform the applicant for the permit. The applicant then shall have the~~
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the Mayor, the Mayor shall so inform the applicant for the permit. The applicant then shall have the duty to pay for the police protection deemed necessary by the Mayor if the Mayor determines it is possible for the event to take place without endangering public safety and that adequate police resources are available. The Mayor's assessment of the quantity of spectators may be independent of representations by the applicant.

B. Persons engaging in public demonstrations for the sole purpose of public issue speech protected under the first amendment are not required to pay for any police protection provided by the City.

SECTION 9. STANDARDS FOR ISSUANCE.

A. The Mayor shall issue a permit as provided for herein when, from a consideration of the application and from such other information as may otherwise be obtained, the Mayor finds that:

- (1) The conduct of the parade or public assembly will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;
- (2) The conduct of the parade or public assembly will not require the diversion of so great a number of City police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection in the City;
- (3) The concentration of person, animals, and vehicles at public assembly points of the parade or public assembly will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such public assembly areas;
- (4) The conduct of the parade or public assembly is not reasonably likely to cause injury to persons or property;
- (5) The parade or public assembly is scheduled to move from its point of origin to its point of termination expeditiously;
- (6) Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;
- (7) There are sufficient parking places near the site of the parade or public assembly to accommodate the number of vehicles reasonably expected;
- (8) The applicant has secured the police protection required under this ordinance;
- (9) Such parade or public assembly is not for the primary purpose of advertising any product, goods or event that is primarily for private profit, and the parade itself is not primarily for profit. The prohibition against advertising any product, goods or event shall not apply to signs, identifying organizations or sponsors furnishing or sponsoring exhibits or structures used in the

parade;

(10) No parade or public assembly permit application for the same time and location is already granted or has been received and will be granted;

(11) No parade or public assembly permit application has already been granted or has been received and will be granted pertaining to the same or approximate time frame and the police resources required for that prior parade or public assembly are so great in combination with the subsequent proposed application that the resulting deployment of police services would have an immediate and adverse effect upon the welfare and safety of persons and property; and

(12) No event is scheduled elsewhere in the City where the police resources required for that event are so great that the deployment of police services for the proposed parade or public assembly would have an immediate and adverse effect upon the welfare and safety of persons and property.

B. No permit shall be granted that allows for the erection or placement of any structure, whether permanent or temporary, on a City street, sidewalk, or right-of-way unless advance approval for the erection or placement of the structure is obtained from the City Council.

SECTION 10. NON-DISCRIMINATION.

The Mayor shall uniformly consider each application upon its merits and shall not discriminate in granting or denying permits under this Ordinance based upon political, religious, ethnic, race, disability, sexual orientation or gender related grounds.

SECTION 11. NOTICE OF DENIAL OF APPLICATION.

The Mayor shall act promptly upon a timely filed application for a parade or public assembly permit but in no event shall grant or deny a permit less than 48 hours prior to the event. If the Mayor disapproves the application, he shall notify the applicant either by personal delivery or certified mail at least 48 hours prior to the event of his action and state the reasons for denial.

SECTION 12. ALTERNATIVE PERMIT.

A. The Mayor, in denying an application for a parade or public assembly permit, may authorize the conduct of the parade or public assembly at a date, time, location, or route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within five days after notice of the action of the Mayor, file a written notice of acceptance with the Mayor.

B. An alternate parade or public assembly permit shall conform to the requirements of, and shall have the effect of, a parade or public assembly permit issued under this Ordinance.

SECTION 13. APPEAL PROCEDURE

~~Any applicant shall have the right to appeal the denial of a parade or public assembly permit to~~
City of Albuquerque

Any applicant shall have the right to appeal the denial of a parade or public assembly permit to an Administrative Hearing Officer. The denied applicant shall make the appeal within five days after receipt of the denial by filing a written notice with the Mayor and the Mayor's agent that denied the permit application. The hearing shall take place within 60 days from the date the Mayor and his agent receives the notice of appeal.

SECTION 14. NOTICE TO CITY AND OTHER OFFICIALS.

Immediately upon the issuance of a parade or public assembly permit, the Mayor shall send a copy thereof to the following:

- A. The Chief of Police;
- B. The City Attorney;
- C. The Fire Marshall;
- D. The Director of the Department of Municipal Development;
- E. The Postmaster or other Postal Service Official;
- F. The manager or responsible head of each public transportation utility, the regular routes of whose vehicles will be affected by the route of the proposed parade or public assembly; and,
- G. The Director of the Parks and Recreation Department.

SECTION 15. CONTENTS OF PERMIT.

Each parade or public assembly permit shall state the following information:

- A. Starting and approximate ending time;
- B. Minimum speed of parade units;
- C. Maximum speed of parade units;
- D. Maximum interval of space to be maintained between parade units;
- E. The portions of the streets that may be occupied by the parade or public assembly;
- F. The maximum length of the parade in miles or fractions thereof; and
- G. Such other information as the Mayor shall find necessary to the enforcement of this Ordinance.

SECTION 16. DUTIES OF PERMITTEE.

- A. A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.
- B. The parade or public assembly chairman or other person heading such activity shall be present at all times and carry the parade or public assembly permit upon his person during the conduct of the parade or public assembly.

SECTION 17. PROHIBITIONS.

The following prohibitions shall apply to all parades and public assemblies:

- A. It shall be unlawful for any person to stage, present, or conduct any parade or public assembly without first having obtained a permit as herein provided.
- B. It shall be unlawful for any person to participate in a parade or public assembly for which the person knows a permit has not been granted.
- C. It shall be unlawful for any person in charge of, or responsible for the conduct of, a duly licensed parade or public assembly to knowingly fail to comply with any condition of the permit.
- D. It shall be unlawful for any person to engage in any parade or public assembly activity that would constitute a substantial hazard to the public safety or that would materially interfere with or endanger the public peace or rights of residents to the quiet and peaceful enjoyment of their property.
- E. It shall be unlawful for any person participating in a parade or public assembly to utilize sound amplification in violation of the City of Albuquerque Noise Ordinance.
- F. It shall be unlawful for any person to ride, drive, or cause to be ridden or driven any animal or animal-drawn vehicle upon any public street in violation of the City of Albuquerque Animal Services Ordinance.
- G. It shall be unlawful for any person or procession to block access to a business, protest in front of a residence or otherwise engage in any activity prohibited by law.

SECTION 18. PUBLIC CONDUCT DURING PARADES OR PUBLIC ASSEMBLIES.

- A. No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or public assembly or with any person, vehicle or animal participating or used in a parade or public assembly.
- B. No driver of a vehicle shall drive between the vehicles or persons comprising a parade or public assembly when such vehicles or persons are in motion and are conspicuously designated as a parade or public assembly.
- C. The Mayor shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade or public assembly. The Mayor shall post signs to that effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.

SECTION 19. REVOCATION OF PERMIT.

The Mayor shall have the authority to revoke a parade or public assembly permit instantly upon violation of the conditions or standards for issuance as set forth in this ordinance or when a

public emergency arises where the police resources required for that emergency are so great that deployment of police services for the parade or public assembly would have an immediate and adverse effect upon the welfare and safety of persons or property.

SECTION 20. PENALTIES.

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

SECTION 21. REPEALER.

The Parade Ordinance, §§ 7-3-1 et seq., ROA 1994, is repealed.

SECTION 22. SEVERABILITY CLAUSE.

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

SECTION 23. COMPILATION.

This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 24. EFFECTIVE DATE.

Unless otherwise provided herein, this ordinance shall take effect five days after publication by title and general summary.

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