

# CITY of ALBUQUERQUE

## TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-79 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Tammy Fiebelkorn by request

1 **ORDINANCE**

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

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

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 Chapter 7, Article 3 ROA 1994 is hereby repealed.**

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

10 **“§ 7-3-1 FINDINGS AND INTENT.**

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

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

24 **§ 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. R.O.A.  
11 1994), who conducts hearings of the propriety of a denial of a permit application  
12 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, food,  
21 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 rendered  
29 by New Mexico licensed providers in response to an individual's immediate  
30 need for medical care to prevent loss of life or aggravation of physical or  
31 psychological illness or injury.

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

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

**PARK OR OPEN SPACE**

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

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

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

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

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

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

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

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

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

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

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

1 services, permits or other approvals from City departments, including, but not  
2 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  
10 City 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  
17 or 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-of-  
23 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; and
- 9           (E)       Public assemblies, unless it is expected that such activity will
- 10          require at least three prearranged City services, permits or other approvals from
- 11          City departments. If a public assembly begins on a sidewalk but attracts an
- 12          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 Department
- 17          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 found
- 21          in separate laws, rules, and policies for events that qualify as special events.
- 22          § 7-3-6 APPLICATION.
- 23          Applicants shall complete and sign a permit application as directed on forms
- 24          provided by the Administration.
- 25          § 7-3-7 FEES AND INSURANCE.
- 26          (A) If the permit application is for the use of any City facility or public
- 27          grounds, or if any City services will be required for the special event, the
- 28          applicant shall pay, prior to the issuance of a permit, charges for the facility,
- 29          public grounds, or services in accordance with any applicable schedule of fees
- 30          provided by the affected department.
- 31          (B)       The applicant shall be required to provide appropriate proof of
- 32          insurance acceptable to the City of Albuquerque that will cover any loss or

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

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

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

33 § 7-3-9 GROUNDS FOR DENYING A PERMIT.

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

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

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

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

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

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

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

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

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

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

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

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

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  
4 been granted or has been received and will be granted pertaining to the same  
5 or approximate time frame such that the police, fire, and EMS resources  
6 required for that prior special or other event are so great in combination with  
7 the subsequent proposed application that the resulting deployment of police,  
8 fire, 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  
11 inability or unwillingness to, conduct the special event pursuant to the terms  
12 and conditions of this article or other City permits or laws;

13 (14) The special event will require the exclusive use of a  
14 park or open space in a manner that will adversely impact upon the use or  
15 access to 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  
22 sponsored by the City. The Administration may give priority to annual,  
23 semiannual, or other regularly scheduled or recurring special events. In  
24 deciding priority, the Administration may consider applicant compliance and  
25 previous special 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, unlawful  
30 or impermissible uses, protect the safety of persons and property, or control  
31 vehicular and pedestrian traffic in and around the special event, provided that  
32 such requirements shall not be imposed in a manner that will unreasonably

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

3 § 7-3-10 NON-DISCRIMINATION.

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

8 § 7-3-10 WAIVER

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

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

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

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

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

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

32 § 7-3-12 ALTERNATIVE PERMIT.

1           (A)     The Administration, in denying an application for a particular  
2 special event permit, may authorize the conduct of the special event at a date,  
3 time, 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 acceptance.

6           (B)     An alternate special event permit shall conform to the  
7 requirements of, and shall have the effect of, a special event permit issued  
8 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 accordance  
12 with the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part  
13 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  
19 immediately of any changes made to the scope or characteristics of a special  
20 event.

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

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

30          § 7-3-15 PROHIBITIONS.

31          The following prohibitions shall apply to all special events:

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

1 (B) No person shall conduct commercial solicitations on public  
2 streets, rights-of-way, or sidewalks within 150 feet of a special event area during  
3 a 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  
6 the 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  
10 between the vehicles or persons comprising a special event when such vehicles  
11 or persons are in motion and are conspicuously recognizable as a special event.

12 (B) The Administration shall have the authority to prohibit or restrict  
13 the 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 unlawful  
15 for any person to park or leave unattended any vehicle in such designated  
16 areas.

17 § 7-3-17 REVOCATION OF PERMIT.

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

32 § 7-3-18 SEVERABILITY CLAUSE.

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

8        § 7-3-19        COMPILATION.

9        This ordinance shall amend, be incorporated in, and compiled as part of the  
10 Revised Ordinances of Albuquerque, New Mexico, 1994.

11       § 7-3-20        EFFECTIVE DATE.

12       This ordinance shall take effect five (5) days after publication in full.

13       § 7-3-99        PENALTY.

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

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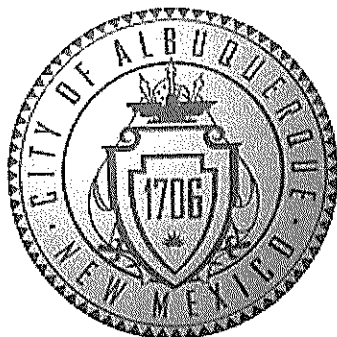
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Mayor Timothy M. Keller

**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

**INTER-OFFICE MEMORANDUM**

March 1, 2023

**TO:** Patrick Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT: REPEAL AND REPLACE ARTICLE 7, CHAPTER 3, THE  
ALBUQUERQUE FREE EXPRESSION AND PARADE ORDINANCE**

Attached are documents requiring Council Action to repeal and replace the "Albuquerque Free Expression and Parade Ordinance" with the "Albuquerque Free Expression and Special Event Permitting Ordinance" to be more inclusive to all special events that enhance Albuquerque. The changes also clarify what type of events require a special event permit and those that do not; protects the right to protest or form public assemblies on public property; establishes a uniform process for the permitting of special events that have an impact on city facilities, services, streets, or venues; clarify timelines required by City departments; and more accurately reflects the delegation authority.

This legislation is forwarded to City Council for approval.



## **Cover Analysis**

### **1. What is it?**

Approval for repealing and replacing the “Albuquerque Free Expression and Parade Ordinance” with “Albuquerque Free Expression and Special Event Permitting Ordinance.”

### **2. What will this piece of legislation do?**

Repeal and replace outdated ordinance to clarify what type of event requires a special event permit from the City while protecting the right to freedom of speech and assembly.

### **3. Why is this project needed?**

To be more inclusive for all types of special events, to clarify when a special event permit is required, and to create a streamlined process for those requiring a special event permit.

### **4. How much will it cost and what is the funding source?**

A financial impact is not expected.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

N/A

### **6. What will happen if the project is not approved?**

The existing ordinance will not change.

### **7. Is this service already provided by another entity?**

N/A.