



Legislation Text

File #: O-23-79, Version: 2

**CITY of ALBUQUERQUE**  
**TWENTY FIFTH COUNCIL**

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

SPONSORED BY: Tammy Fiebelkorn by request

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  
(Fiebelkorn, by request)

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 Chapter 7, Article 3 ROA 1994 is hereby repealed.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.

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

§ 7-3-3 DEFINITIONS.

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

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

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

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

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.

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

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

EMERGENCY MEDICAL SERVICES (EMS). The sanctioned services rendered by New Mexico licensed providers in response to an individual’s immediate need for medical care to prevent loss of life or aggravation of physical or 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 Public Open Space and acquired by the City of Albuquerque.

(3) Any other lands so designated as Parks or Major Public 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 services, permits or other approvals from City departments, including, but not limited to, any of the following:

- (1) Street closures;
- (2) Barricades;
- (3) Solid Waste services;
- (4) Structures;
- (5) Public parking arrangements not part of regular, day-to-day City operations;
- (6) Electrical service arrangements not part of regular, day-to-day City operations;
- (7) Food license;

- (8) Noise permit;
- (9) Liquor license;
- (10) Police protection;
- (11) Emergency medical services and/or fire protection; or
- (12) Any other approval or service required by law, ordinance, rule or policy.

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

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

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.

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

#### § 7-3-4 PERMIT REQUIRED.

No person shall conduct any special event without a permit.

#### § 7-3-5 EXCEPTIONS.

Special event permits are not required for the following activities:

- (A) Activities for which the Administration issues a film permit;
- (B) Funeral processions;
- (C) Students going to and from school classes or participating in school sanctioned educational activities;
- (D) A governmental agency, public body, or public entity; a City Department acting within the scope of its functions; or a person acting within the scope of the current, documented authority of a governmental agency, public body, public entity, or City Department;
- (E) Public assemblies, unless it is expected that such activity will require at least three prearranged City services, permits or other approvals from City departments. If a public assembly begins on a sidewalk but attracts an unexpected number of participants such that the public assembly begins to occupy a portion of a street, the Albuquerque Police Department shall accommodate the activity by closing a segment, lane, or portion of the street if so doing will not jeopardize the participants or inhibit the flow of traffic on a major traffic route; provided, however,

that the Albuquerque Police Department is authorized to limit the available portion of the street;

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

#### § 7-3-6 APPLICATION.

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

#### § 7-3-7 FEES AND INSURANCE.

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

(B) The applicant shall be required to provide appropriate proof of insurance acceptable to the City of Albuquerque that will cover any loss or damage to persons or property. Applicants may be required to demonstrate the City of Albuquerque has been named as an additional insured party.

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

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

(A) The Administration shall determine whether and to what extent dedicated police, fire, and EMS protection is necessary for the special event for traffic control and the public health, safety, and welfare. The Administration 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 public travel and use of the streets. The Administration, as advised by Albuquerque Fire Rescue, will determine the minimum number of required fire and EMS providers and their required service capabilities, including basic life support (BLS), advanced life support (ALS), fire suppression, and transport capabilities. The number of required fire and EMS providers and service capabilities will be based on guidelines set forth in the Federal Emergency Management Agency's IS:15 Special Events Contingency

Planning, NFPA, and any relevant New Mexico state statute or administrative code. Except with regard to applications pertaining to public assembly special events or where unlawful, if stand-by of dedicated police, fire, or EMS protection is deemed necessary by the Administration, the Administration shall so inform the applicant. The applicant then shall have the duty to pay for the necessary police, fire, and EMS protection so long as the Administration determines it is possible for the event to take place without endangering the public health, safety, or welfare and that adequate police, fire, and EMS resources are available. The Administration's assessment of the quantity of spectators may be independent of representations by the applicant.

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

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

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

- (1) The event does not comply with the law, including this article;
- (2) The property sought to be used for the special event is closed or partially closed for construction, renovations, or other reasons;
- (3) The conduct of the special event will substantially interrupt the safe and orderly movement of pedestrian, vehicular, or other traffic contiguous to the special event's route or location;
- (4) The conduct of the special event will require the diversion of so great a number of City police officers, firefighters, and EMS services to properly serve the line of movement and the areas contiguous thereto as to prevent normal police, fire, and EMS protection in the City;
- (5) The concentration of individuals, animals, and vehicles at assembly points of the special event will interfere with proper fire and police protection of, or EMS service to, areas contiguous to such assembly areas;
- (6) Except a public assembly, the conduct of the special event is likely to cause injury to persons or property or a public health threat, or the public assembly special event poses a clear and present danger to public health, safety, or welfare;
- (7) The special event is not scheduled to move from its point of origin to its point of termination expeditiously, unless the direction or movement of a public assembly special event is inextricably intertwined with the purpose of the public assembly;
- (8) Adequate sanitation and other required health facilities are not or will not be made available in or adjacent to any assembly areas;

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

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

(11) A special event or other permit application for the same time and location has already been granted or has been received and will be granted, and the location cannot accommodate all submitted special events at the same time;

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

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

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

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

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

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

(C) The Administration may condition any permit with reasonable requirements concerning the time, place or manner of holding such event as are necessary to coordinate multiple uses of public property, assure preservation of public property and public places, prevent dangerous, unlawful or impermissible uses, protect the safety of persons and property, or control vehicular

and pedestrian traffic in and around the special event, provided that such requirements shall not be imposed in a manner that will unreasonably restrict expressive or other activity protected by the New Mexico or United States Constitutions.

#### § 7-3-10 NON-DISCRIMINATION.

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

#### § 7-3-10 WAIVER.

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

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

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

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

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

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

#### § 7-3-12 ALTERNATIVE PERMIT.

(A) The Administration, in denying an application for a particular special event permit, may authorize the conduct of the special event 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 (5) business days after notice of the action of the Administration, submit a written notice of



acceptance.

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

#### § 7-3-13 APPEAL PROCEDURE.

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

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

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

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

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

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

#### § 7-3-15 PROHIBITIONS.

The following prohibitions shall apply to all special events:

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

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

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

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

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

special event.

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

#### § 7-3-17 REVOCATION OF PERMIT.

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

#### § 7-3-99 PENALTY.

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

Section 3. 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 hereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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

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

X:\CL\SHARE\CL-Staff\Legislative Staff\Legislation\25 Council\O-79final.docx