

AN ORDINANCE 2008-03-13-0201

AMENDING CHAPTER 19, ARTICLE XVII OF THE CITY CODE CONCERNING PARADES, RUNS, WALKS, AND RELATED EVENTS TO REFLECT CHANGES DIRECTED BY COURT ORDER TO INCLUDE MORE SPECIFIC GUIDELINES IN THE ASSESSMENT OF ESTIMATED TRAFFIC CONTROL COSTS, AND THE ELIMINATION OF EXEMPTIONS FOR FUNERAL PROCESSIONS AND GOVERNMENTAL AGENCIES FROM PERMIT REQUIREMENTS.

\* \* \* \* \*

WHEREAS, on November 29, 2007, the City Council adopted Ordinance No. 2007-11-29-1193, which enacted Chapter 19, Article XVII of the City Code regarding the issuance of procession permits; and,

WHEREAS, on February 21, 2008 in *International Women's Day March Planning Committee v. City of San Antonio*, SA-07-CA-971-XR, the United States District Court issued a preliminary injunction concluding that the ordinance failed to require the chief of police to devise written guidelines to determine the number of safety officers and traffic barricades needed for a procession, along with a clearly stated appeals process for challenging costs assessed to a permittee; and,

WHEREAS, the court further concluded that the ordinance impermissibly exempted funeral processions and governmental agencies from the permit requirement; and,

WHEREAS, City Council wishes to amend Chapter 19, Article XVII of the City Code in response to the issues raised in the court's ruling; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Article XVII (Parades, Runs, Walks and Related Events) of Chapter 19 of the City Code of San Antonio, Texas is hereby amended as indicated below:

Sec. 19-630. Definitions.

For this chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

- (1) "Chief of Police" shall mean the chief of police of the San Antonio Police Department or his designated representative.
- (2) "City Manager" shall mean the city manager of the City of San Antonio or his designated representative.

- (3) "Permit holder" shall mean a person issued a procession permit pursuant to this article.
- (4) "Procession" shall mean a group of persons moving along, by whatever means, in an orderly, formal manner on any street, alley, or public thoroughfare from a point of origin to a point of termination or a group of persons moving along, by whatever means, in an orderly, formal manner anywhere else in the city from a point of origin to a point of termination in such a way as to impede the normal flow or regulation of pedestrian or vehicular traffic.
- (5) "Procession Permit" shall mean the procession permit required by this article.
- (6) "First Amendment Activity" shall mean all expressive and associative activity that is protected by the United States and Texas Constitutions, including speech, press, assembly, and the right to petition, but not including commercial advertising.
- (7) "First Amendment Procession" shall mean a procession, the sole or principal object of which is First Amendment activity.
- (8) "Non-First Amendment Procession" shall mean a procession the sole or principal object of which is not First Amendment activity.
- (9) "City Attorney" shall mean the city attorney of the City of San Antonio or his designated representative.
- (10) "Procession Unit" shall mean any vehicle, animal or object used to transport a person who is participating in a procession.
- (11) "Organize" shall mean to arrange systematically as an individual or with a committee or group for harmonious or united action.
- (12) **"Traffic control personnel" shall mean certified peace officers engaged to provide control of the flow of both non-participant and participant pedestrians and vehicles so as to minimize the traffic congestion and to maintain traffic flow at permitted events.**

Sec. 19-631. Permit Required.

No person shall organize any procession without having first obtained a procession permit.

Sec. 19-632. Exceptions to Application.

This article shall not apply to:

- ~~(1) funeral processions or escorts;~~
- ~~(2) a governmental agency acting within the scope of its functions;~~
- ~~(3)~~**(1)** the movement of persons in an orderly, formal manner from a point of origin to a point of termination on a sidewalk, so long as the movement does not impede the normal flow or regulation of pedestrian or vehicular traffic; or
- ~~(4)~~**(2)** a public assemblage that does not involve the movement of persons in an orderly, formal manner from a point of origin to a point of termination.

Sec. 19-633. Application for Permit.

(A) A person seeking issuance of a procession permit shall file an application with the chief of police on forms provided by such officer.

(B) First Amendment Procession Permits

- (1) An application for a First Amendment procession permit shall be filed with the chief of police not less than thirty calendar days nor more than one hundred fifty calendar days before the proposed procession date;
- (2) Where the organization of a First Amendment procession, however, begins within thirty calendar days of the proposed procession date, an application for a First Amendment procession permit shall be filed with the chief of police within three calendar days of the date on which organization of the procession begins, but not less than two calendar days before the proposed procession date.
- (3) The chief of police, may consider a First Amendment application filed less than thirty calendar days, but not less than two calendar days, before the proposed procession date where organization of the procession began more than thirty calendar days before the proposed procession date so long as there is adequate time for SAPD to process the application and plan for the procession.

(C) Non-First Amendment Procession.

- (1) An application for a non-First Amendment Procession permit shall be filed with the chief of police not less than forty-five calendar days nor more than one hundred fifty calendar days before the proposed procession date.
- (2) The chief of police may consider a non-First Amendment Procession application filed less than forty-five calendar days before the proposed procession date, but not less than four calendar days, before the proposed procession date where organization of the procession began more than forty-five calendar days before the proposed procession date so long as there is adequate time for SAPD to process the application and plan for the procession.

(D) The permit holder for a procession actually held during a prior year may receive advance approval of the route, date, and time not more than thirteen months in advance of the scheduled date of the procession. The chief of police may give advance approval after receiving a written request from the permit holder. The permit holder shall receive the right of first refusal as to the route, date, and time of the procession that may be exercised until ninety calendar days prior to the approved date of the procession.

(E) The application shall contain the following:

- (1) the name, address, and telephone number of the person seeking to conduct the procession;

- (2) where the procession is to be held for or by an entity, rather than an individual, the name, address, and telephone number of the entity and the name, address, and telephone number of the head of the entity;
- (3) where the procession is to be held by or for any person other than the applicant, documentation evidencing authority to make the application;
- (4) the name, address, and telephone number of the person who will be the procession chairman and who will be responsible for its conduct;
- (5) the date the procession will be conducted;
- (6) the location of the assembly area, the starting point of the procession, the route of the procession, the ending point of the procession, and the location of the disbanding area;
- (7) the approximate number of persons who will participate in the procession;
- (8) the approximate number vehicles that will be included in the procession and a description of those vehicles;
- (9) the approximate number of animals and the type of animals that will be included in the procession;
- (10) the time when the procession will begin and end;
- (11) a statement as to whether the procession will occupy all or only a portion of the width of the streets proposed to be used;
- (12) the time at which units of the procession will arrive at the assembly area;
- (13) the purpose of the procession; and
- (14) any other information which the chief of police finds necessary to an evaluation of the request under the standards for issuance set forth in section 19-634.

- (F) The application shall be accompanied by a fee of \$75. In the event the organizers of an event cannot provide payment with the application, an organizer may submit an affidavit attesting that he or she will provide payment within 15 business days of the date of the submission of the application. Failure to provide payment will trigger the surety bond requirement in Section 19-636 for future procession events by organizers, and the organizer signing the affidavit shall become personally responsible for payment.

Sec. 19-634. Standards for Issuance.

The chief of police shall uniformly treat each application in a just, fair, and nondiscriminatory manner bearing in mind that the time, place, duration, and manner of use of the public streets, parks, and other public ways and places for procession shall be subordinated to the public safety, comfort and convenience, the maintenance of order, and avoidance of congestion. The chief of police shall issue a permit when, from a consideration of the application, he finds that:

- (1) the conduct of the procession will not substantially interrupt the safe and orderly movement of other traffic near its route;

- (2) the conduct of the procession will not require the diversion of so great a number of police officers of the city to properly police the line of movement and the areas near there as to prevent normal police protection to the city;
- (3) the conduct of such procession will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than that to be occupied by the proposed line of march and areas near there;
- (4) the concentration of persons, animals and vehicles at assembly and disbanding points of the procession will not unduly interfere with proper fire and police protection of, or ambulance service to, areas near such assembly or disbanding areas;
- (5) the conduct of such procession will not interfere with the movement of fire fighting equipment enroute to a fire;
- (6) the procession is scheduled to move from its point of origin to its point of termination without unreasonable delays enroute;
- (7) the applicant has fulfilled the requirements of this article; and
- (8) the event does not conflict with a previously scheduled event that is scheduled to
  - a. occur at the same time and place; or
  - b. occur at the same time, though at a different location or along a route that crosses over or conflicts with previously scheduled events; and
- (10) when SAPD is available where the proposed event is to take place downtown.

Sec. 19-635. Notice of Rejection; Appeal.

- (A) The chief of police shall act upon the application for a procession permit within five (5) calendar days it has been filed with SAPD. If an application for permit has been filed under Section 19-633(B)(2) or (3), or under Section 19-633(C)(2) for an event which will take place within five (5) days of the submission of the application, the chief of police shall act upon the application as soon as is practicably possible. If the chief does not approve the application, he shall mail, by certified mail/return receipt requested, to the applicant, within ten calendar days after the date upon which the application was filed, a notice of his action, stating the reason for his denial of a permit. The applicant shall have the right to appeal a denial of a procession permit to either the city council or the city manager by filing notice of appeal with the city clerk, specifying whether the appeal is to the city council or the city manager, within seven calendar days after receipt of the notice provided above. The appeal shall be heard within ten calendar days of the filing of the appeal. The council or manager or the manager's designee shall hear the appeal as soon as practicable. The decision of the City Council or the City Manager or the designee is final.
- (B) Where the denial of a permit application is upheld on appeal by the City Council or the City Manager, the city, acting by and through its city attorney, shall, within five days following the appellate decision, apply to either a United States federal district court or to a state district court for a judicial determination as to whether

the proposed procession described in the application may be prohibited, naming the applicant as party defendant. The city attorney shall exert every reasonable effort to have the case heard on its merits without delay. The burden of showing that the proposed procession may be prohibited shall rest on the city. If the city appeals an adverse judicial determination, it shall file its notice of appeal within five days after the ruling has been issued by the court.

Sec. 19-636. Duties of and Costs to be Paid by Permit Holder.

- (A) Each permit holder shall comply with all requirements of this article, the permit directions and conditions, and with all applicable laws and ordinances.
- (B) Each permit holder is responsible for the costs of
  - (1) providing traffic control devices for the procession route in accordance with section 19-66 of this chapter;
  - (2) providing traffic control personnel, whether on duty or on overtime, for the procession route; and
  - (3) cleaning up the procession route.

**(C) In reviewing the application for parade permit, the chief of police or his or her designee shall determine the number of peace officers and traffic control devices reasonably necessary to control traffic in the area of the requested procession. The chief or designee will consider the following factors and identify the effect of each factor in assessing the estimated traffic control costs:**

- (1) the route and the identification of roadways that cross through or feed into the street of the proposed route;**
- (2) the number of anticipated participants and vehicles in the event;**
- (3) identification of other roadways, or public transportation and emergency vehicle routes that may be affected by the event;**
- (4) length of the route and the identification of the number of intersections along the route that will require barricades or traffic control personnel;**
- (5) whether intersections must be individually barricaded or whether officers can be assigned to move along with the event;**
- (6) the date and time of the event;**
- (7) volume of vehicular and pedestrian traffic typical on and along the route for the time of day, day of the week and time of year for the proposed route.**

**The cost for each San Antonio Police Department officer shall be set in accordance with the Collective Bargaining Agreement. The cost for traffic control devices will be set in accordance with the prices set in the city's**

annual contract for traffic control devices. The permittee may choose to contract directly with a traffic control device provider subject to compliance with the Texas Manual on Uniform Traffic Control Devices.

~~Costs will be determined based on the proposed route, time of day, time of year and anticipated number of individuals in procession.~~ For First Amendment events, the City shall absorb the first \$3000 of the traffic control devices and traffic control personnel costs on behalf of the permit holder.

Traffic control personnel shall be in a number sufficient to adequately safeguard ~~the safety of the event participants and the general public, as determined by the chief of police~~ the flow of both participant and non-participant traffic in order to minimize congestion, as determined by the chief of police. Any additional costs for police personnel deemed necessary to provide security due to the nature of the event will not be assessed to the permit holder. Traffic control personnel shall be limited to the furthest extent practicable to city uniformed police officers, and may include, with approval of the chief of police, other uniformed, certified peace officers knowledgeable of traffic control laws. Events held within the downtown expressway loop requires the use of SAPD officers, unless staffing restraints would lead to the denial of the permit, in which case the use of other certified peace officers may be permitted by the chief. When available and safely practicable, the chief or designee shall utilize on-duty officers before off-duty officers.

The permit holder shall obtain approval of the traffic control plan described above by the chief of police, including a barricade plan and an estimate of traffic control costs. The permit holder shall receive from the city an invoice for the required costs within fifteen calendar days after the procession. The payment for these costs shall be due to the city within thirty calendar days after the date of the procession. If the applicant disputes the costs assessed by the police department, the applicant may file an appeal with the Office of the City Manager within seven (7) business days of receipt of the invoice. The appeal must identify the specific costs in dispute. The City Manager or his or her designee will review the assessed costs based on the criteria required to be used by the chief of police and render a final decision regarding the costs to be paid by the permittee within fifteen (15) business days of receiving the appeal. No costs shall be owed during the appeal until the Office of the City Manager has rendered its decision.

The chief of police shall create a written Standard Operating Procedure for issuance of permits and assessments of traffic control costs in conformity with this section.

~~(C)~~(D) Because of its broad appeal, historic tradition, cultural significance, and other public benefits provided by the Deiz Y Seis Parade, the city shall cover the costs

of traffic control personnel. Because of their broad appeal, historic tradition, cultural significance, association with a national holiday or a day given statewide recognition, and other public benefits provided by the Martin Luther King March and the Veterans Day Parade, the city shall cover the costs of traffic control personnel and traffic control devices.

~~(D)~~(E) If an applicant owes fees not timely paid in connection with a procession previously approved and conducted or if the estimated costs to the city under this section are greater than \$10,000.00, the applicant shall, prior to approval of the application for a procession permit, file a surety bond in accordance with and as described in section 1-16 of this code in the amount of the estimated costs.

~~(E)~~(F) Prior to approval of the application for a Non-First Amendment Procession permit, the applicant shall submit to the chief of police a certificate of insurance and endorsement evidencing commercial general liability coverage, including premises/operations, independent contractors, personal injury, and contractual liability, at a combined single limit of \$1,000,000.00 per occurrence, with the City of San Antonio being named as the additional insured by endorsement. The applicant shall provide at least thirty days' advance notice of cancellation or material alteration of the insurance policy. The city recommends and encourages, but does not require the organizers of First Amendment processions to also obtain insurance for their events.

~~(F)~~(G) At least 24 hours before the scheduled start of the event, the permit holder for a "Non-First Amendment Procession" shall make a reasonable effort to notify the businesses and residences located around the assembly area, along the procession route, and around the disbanding area of the scheduled procession. A copy of any flyer or handout used in making the notification shall be provided to the chief of police at least 24 hours prior to the beginning of the procession. It is recommended, but not required, that the permit holder for a "First Amendment Procession" provide the same notices.

Sec. 19-637. Revocation of Permit.

The chief of police shall have the authority to revoke a procession permit issued pursuant to this article when the conditions supporting the findings made by the chief of police pursuant to section 19-634 change in such a way, prior to the date on which the procession is to be held, that a procession permit would not otherwise be issued. The chief of police shall have the authority to revoke a procession permit if the permit holder does not comply with section 19-636.

Sec. 19-638. Public Conduct During Parades.

- (A) Interference. It shall be unlawful for any person to hamper, obstruct or impede, or interfere with any procession or procession assembly or with any person, vehicle, or animal participating or used in a procession.
- (B) Driving through processions. It shall be unlawful for any driver of a vehicle to drive between the vehicles or persons comprising a procession when such vehicles or persons are in motion and are conspicuously designated as a procession unless directed to do so by a police officer.
- (C) Parking on procession route. The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or highway or part thereof constituting a part of the route, forming area, disbanding area, or buffer zone of a procession. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.
- (D) Prohibited substances. It shall be unlawful for any person to sell, possess, or use a pressurized container of the substance commonly known as "liquid string," "silly string," or "super string," or any quantity of the small explosive devices commonly known as "snappers," "throw downs," "pop pops," or "popping match sticks," which are paper-wrapped wads of sand coated with a minute quantity of explosive powder and adhesive, producing a small report upon impact with hard surfaces, in any public place or private property.
- (E) Control of processions: restrictions. Upon initiation of a procession the chief of police shall take over control of the movement of the procession. All participants shall be required to maintain a forward progress. No participant shall throw or give away candy, gifts, tokens, advertisements, or any other objects from any participant or procession unit while the unit is on the procession route. This provision is not intended to prohibit the distribution of expressive material protected under the first amendment, including leaflets, provided the distribution is not from a procession unit that is on the procession route. Failure to observe these requirements shall constitute a violation of this article and the chief of police is empowered to remove this unit from the procession immediately.

Sec. 19-639. Criminal Penalties.

- (A) It shall be unlawful to fail to obtain a permit required under this chapter for any procession. Any violation committed intentionally, knowingly or recklessly shall be deemed to be guilty of a misdemeanor and shall upon conviction be punished by a fine not exceeding five hundred dollars (\$500.00).
- (B) The intentional, knowing or reckless commission of any act made unlawful by Sec. 19-638 shall be deemed a misdemeanor and shall upon conviction be punished by a fine not exceed five hundred dollars (\$500.00).

**SECTION 2.** All other provisions of Chapter 19 of the City Code of San Antonio, Texas shall remain in full force and effect.

**SECTION 3.** Should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

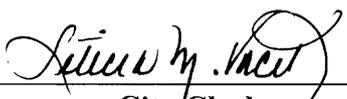
**SECTION 4.** The publishers of the City Code of San Antonio, Texas are authorized to amend this code to reflect the changes adopted in this ordinance and to correct typographical errors and to format and number paragraphs to conform to the existing code.

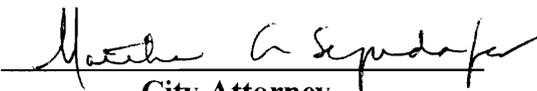
**SECTION 5.** The City Clerk of the City of San Antonio is directed to publish notice of this ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

**SECTION 6.** This ordinance shall take effect ten days from the date of passage. The City acknowledges that enforcement of Chapter 19, Article XVII continues under injunction until further order from the federal district court.

**PASSED AND APPROVED this 13<sup>th</sup> day of March, 2008.**

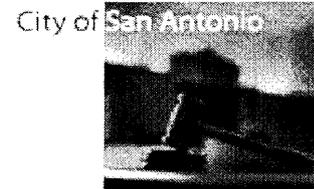
  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney



Request for  
**COUNCIL**  
ACTION



### Agenda Voting Results - 15

<b>Name:</b>	15						
<b>Date:</b>	03/13/2008						
<b>Time:</b>	03:12:34 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance amending Chapter 19, Article XVII of the City Code concerning Parades, Runs, Walks, and Related Events to reflect changes directed by Court order to include more specific guidelines in the assessment of estimated traffic control costs. [Erik J. Walsh, Assistant City Manager; William McManus, Police Chief]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1			x			
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5			x			
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				x
John G. Clamp	District 10		x				

**Affidavit of Publisher**

STATE OF TEXAS

COUNTY OF BEXAR

S.A. - CITY CLERK

AMENDING CHAPTER 19, ARTICLE XVII OF THE CITY CODE CONCERNING PARADES, RUNS, WALKS, AND RELATED EVENTS TO REFLECT CHANGES DIRECTED BY COURT ORDER TO INCLUDE MORE SPECIFIC GUIDELINES IN THE ASSESSMENT OF ESTIMATED TRAFFIC CONTROL COSTS, AND THE ELIMINATION OF EXEMPTIONS FOR FUNERAL PROCESSIONS AND GOVERNMENTAL AGENCIES FROM PERMIT REQUIREMENTS.

PASSED AND APPROVED THIS 13TH DAY OF MARCH, 2008.

/S/ PHIL HARDBERGER  
MAYOR

ATTEST: LETICIA VACEK  
CITY CLERK  
3/19

Before me, the undersigned authority, on this day personally appeared Helen I. Lutz, who being by me duly sworn, says on oath that she is Publisher of the Commercial Recorder, a newspaper of general circulation in the City of San Antonio, in the State and County aforesaid, and that the An Ordinance 2008-03-13-0201 here to attached has been published in every issue of said newspaper on the following days, to wit:

03/19/2008.

*Helen I. Lutz*

Sworn to and subscribed before me this 19th day of of March, 2008.

*Martha L. Machuca*

