

First Amendment Assembly and Procession Policies

B Session

Presented by Andy Segovia, City Attorney

City Attorney's Office

Wednesday, December 13, 2017

City Council Request (CCR)

- ▶ Reassess permitting procedures for First Amendment assembly and procession in public places
- ▶ Provide options for easing restrictions for safe, peaceful, and legal demonstrations

Governance Committee Direction

- ▶ Review standards for issuance of permit
- ▶ Reassess fees related to First Amendment assembly and procession
- ▶ Expand public spaces where assembly and procession are allowed while providing for security needs at locations, such as the airport
- ▶ Meet with Free Speech Coalition

Free Speech Coalition's Requests

- ▶ Assembly included in Parade Ordinance
- ▶ Centralized application location
- ▶ Minimize SAPD interaction
- ▶ No-cost procession
- ▶ Use of volunteers / parade marshals to control and direct traffic

Timeline

Date	Event
February 2, 2017	CCR submitted by Councilman Trevino
August 2, 2017	Governance Committee Meeting
September 21, 2017	1 st meeting with Coalition
October 6, 2017	2 nd meeting with Coalition
November 3, 2017	3 rd meeting with Coalition
December 5, 2017	4 th meeting with Coalition
December 13, 2017	B Session
Early 2018	Tentative date for revised parade and assembly ordinance for A session

The First Amendment

- First Amendment .101
- Activities Protected by the First Amendment
- First Amendment & Municipalities
- Regulation Based on Location

First Amendment 101

- ▶ Freedom of religion
- ▶ Freedom of speech
- ▶ Freedom of the press
- ▶ Freedom of peaceful assembly
- ▶ Freedom to petition the government for redress of grievances

The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Which of these activities is not protected by the First Amendment?

- ▶ Writing check to political campaign
- ▶ Temporary signs for church service
- ▶ Falsely yelling fire in a crowded theater
- ▶ Baking a wedding cake

First Amendment & Municipalities

- ▶ Signs
- ▶ Panhandling
- ▶ Public official speech
- ▶ Displays on public property
- ▶ Assemblies & processions

First Amendment Activity – Regulation Based on Location

- ▶ The law recognizes that First Amendment activity occurs in two locations:
 - Public forums
 - Non-public forums
- ▶ Different legal standards apply to each
- ▶ Recurrent theme with respect to assembly and procession

Public Forums

- Public Forum Locations
- Legal Standard of Review

Public Forum Locations

- ▶ Examples of public places historically linked with the exercise of First Amendment freedoms:
 - Streets
 - Sidewalks
 - Parks
 - Public buildings



Legal Standard of Review

- ▶ City may impose reasonable restrictions on the time, place, and manner of protected speech, provided that the restriction is:
 - narrowly tailored
 - serves a **significant government interest**, and
 - leaves open **ample alternatives**

Assembly

- Parks – Spontaneous Assembly
- Parks – Assembly with a Permit
- Travis Park
- Recommendation #1

Parks – Spontaneous Assembly

- ▶ Citizens may generally exercise First Amendment freedoms in City parks without regulation.
- ▶ Citizens can use park pavilions or open space on a first-come, first-served basis without a permit.
- ▶ A permit is required only for specific time/date reservations, or for other special events.

Parks – Assembly with a Permit

- ▶ Fees charged for reserving use of park facilities vary by facility/park.
 - <http://www.sanantonio.gov/ParksAndRec/Reservations-Permits/Reservations-How-To>
- ▶ Fees charged for non-commercial use are lower than those charged for commercial use.
 - Non-commercial = family reunion picnic, First Amendment event
 - Commercial = concert promoter

Parks – Assembly with a Permit

- ▶ Park permits aid in the following:
 - Coordinate multiple uses of limited space
 - Assure preservation of facilities
 - Protect health and safety
 - Ensure lawfulness of activities
 - Assure financial responsibility for damage caused by events held at the City site

Travis Park



Recommendation #1: Address Assembly within the Procession Ordinance

- ▶ The right to assemble is not traditionally addressed in our ordinance.
- ▶ However, staff recommends acknowledging the right to assemble within the ordinance.
- ▶ Ordinance will also include the right to “spontaneous assembly.”

City's Parade Ordinance

- Parade Ordinance
- Current Parade Ordinance Costs
- Recommendation #2

Parade Ordinance

- ▶ The City's Parade Ordinance requires permits only when the procession/activity will interfere with traffic or will block a sidewalk.
- ▶ The ordinance does *not* apply to people moving in an orderly fashion on the sidewalk that do not impede pedestrian or vehicular traffic.
- ▶ Permit process serves the objective of ensuring public safety.
- ▶ The ordinance has withstood legal challenges, but review was productive.

Current Parade Ordinance Costs

- ▶ Organizer reimburses traffic costs of SAPD officers and barricades.
- ▶ Organizers may choose to contract directly with barricade provider.
- ▶ The City covers the first \$3,000.00 in reimbursable costs for organizer for First Amendment activities.
- ▶ City charges \$75 permit fee.

Recommendation #2: Remove Cost and Adjust Procession Guidelines for First Amendment Processions

- ▶ Remove the \$75 permit fee
- ▶ No cost to event organizers for traffic safety and barricades
- ▶ Reasonable time, place, and manner restrictions (no procession during morning or evening rush hour)
 - Objective criteria

Non-Public Forums

- Non-public Forum Locations
- Regulation of Speech in a Non-public Forum
- Airport
- Henry B. Gonzalez Convention Center
- Alamodome

Non-Public Forum Locations

- ▶ Places that are not historically linked with the exercise of First Amendment freedoms or places where such activity would be inconsistent with their uses.
- ▶ **Examples:**
 - Airports
 - Military Bases
 - Convention Center
 - Arenas/Stadiums

Regulation of Speech in a Non-Public Forum

- ▶ City may impose reasonable restrictions, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's point of view.

Airport

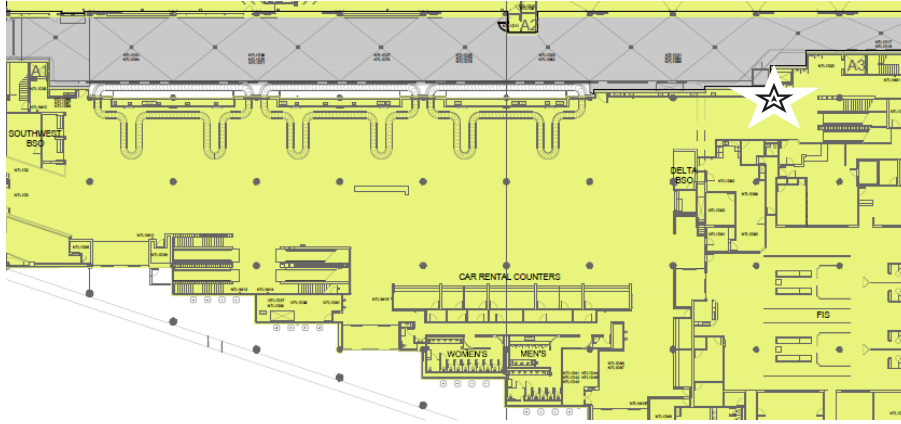
- Airport – Current
- Recommendation #3
- Airport – Images of Proposed Protest Areas

Airport – Current

- ▶ Airports must comply with FAA security regulations/federal law.
- ▶ Request permit at least 2 business days before the scheduled activity.
- ▶ The Director may issue permits for up to 3 people to assemble and demonstrate at designated locations.
- ▶ Permits are free.

Recommendation #3: Airport Changes

- ▶ The Aviation Department will revise policy to give the Director flexibility to:
 1. Increase the number of persons covered by the permit; and
 2. Offer additional locations for assembly; and
 3. Create a good cause exception for the requirement to obtain a permit two business days in advance of the demonstration
- ▶ Maps of proposed speech areas on next 3 slides.



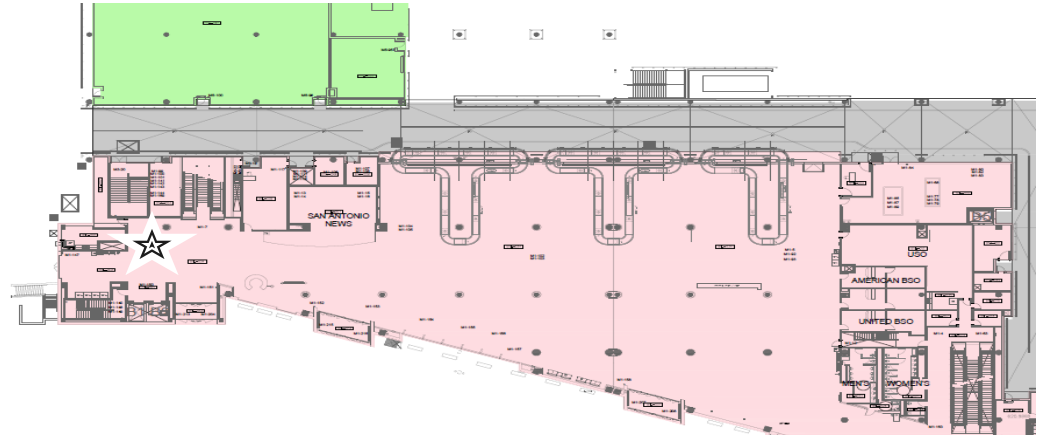
Terminal A Baggage Claim

- Freedom of Information Booth

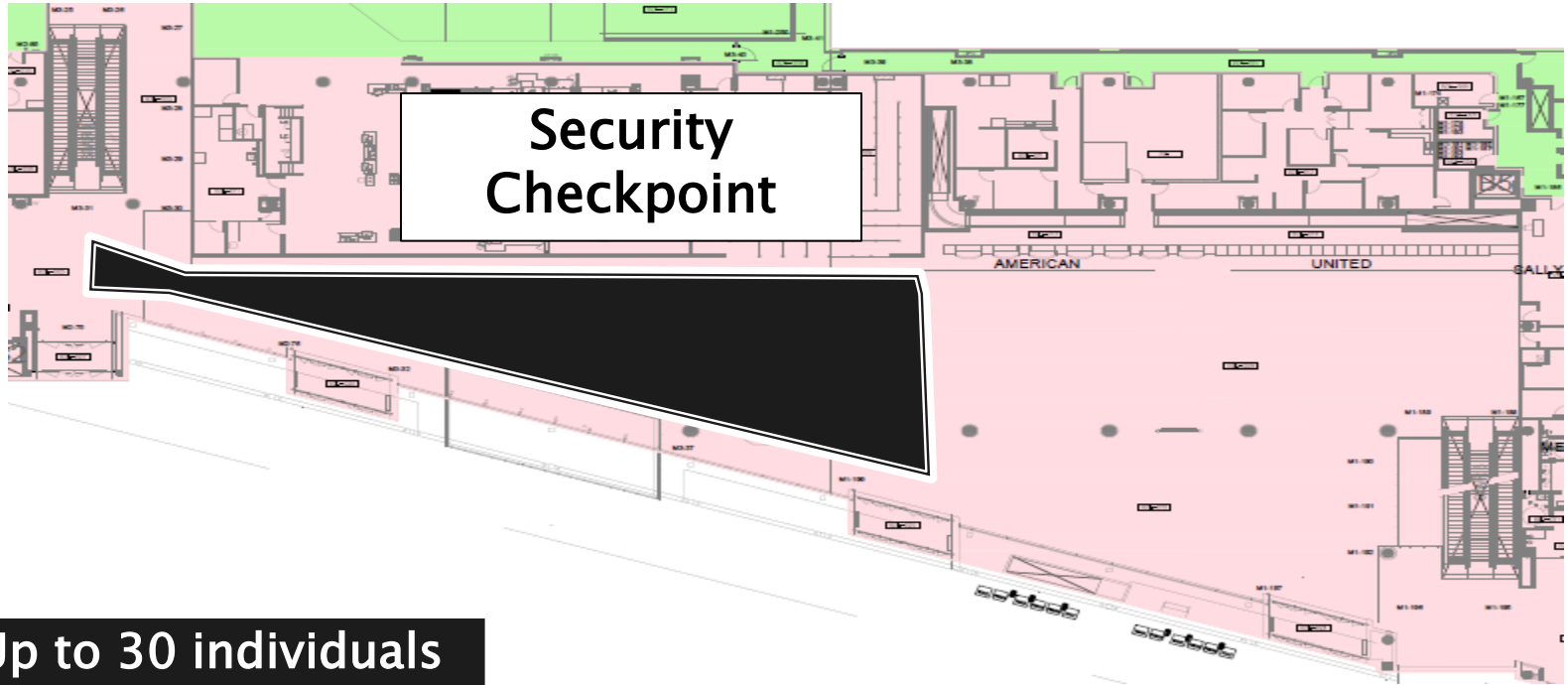
- Up to 5 individuals at each location

Terminal B Baggage Claim

- Freedom of Information Booth



Small-Sized Group: Existing Locations



- Up to 30 individuals

Medium-Sized Group: Terminal B Location



Employee Parking

Texas Monthly

Terminal
B

- Arrivals level—past terminal, under upper roadway
- On grass, off sidewalk

Large-Sized Group: Exterior Location

Convention Center and Alamodome

Henry B. Gonzalez Convention Center and Alamodome

- ▶ Convention & Sports Facilities (CSF) has identified areas where groups can assemble for free speech activity.
- ▶ The areas were designated based on visibility, safety, and availability.

Henry B. Gonzalez Convention Center and Alamodome

- ▶ Designated locations are outdoors.
- ▶ No fees are required.
- ▶ Citizens are still free to use sidewalks in and around these facilities consistent with traditional public forum, **so long as they do not impede pedestrian or vehicular traffic.**

Recommendation #4: Convention Center & Alamodome Policy

- ▶ Allow CSF to implement policy for assembly and demonstration at designated locations for Convention Center and Alamodome to provide public with safe gathering location at no cost.
- ▶ Maps of protest areas on next 3 slides.

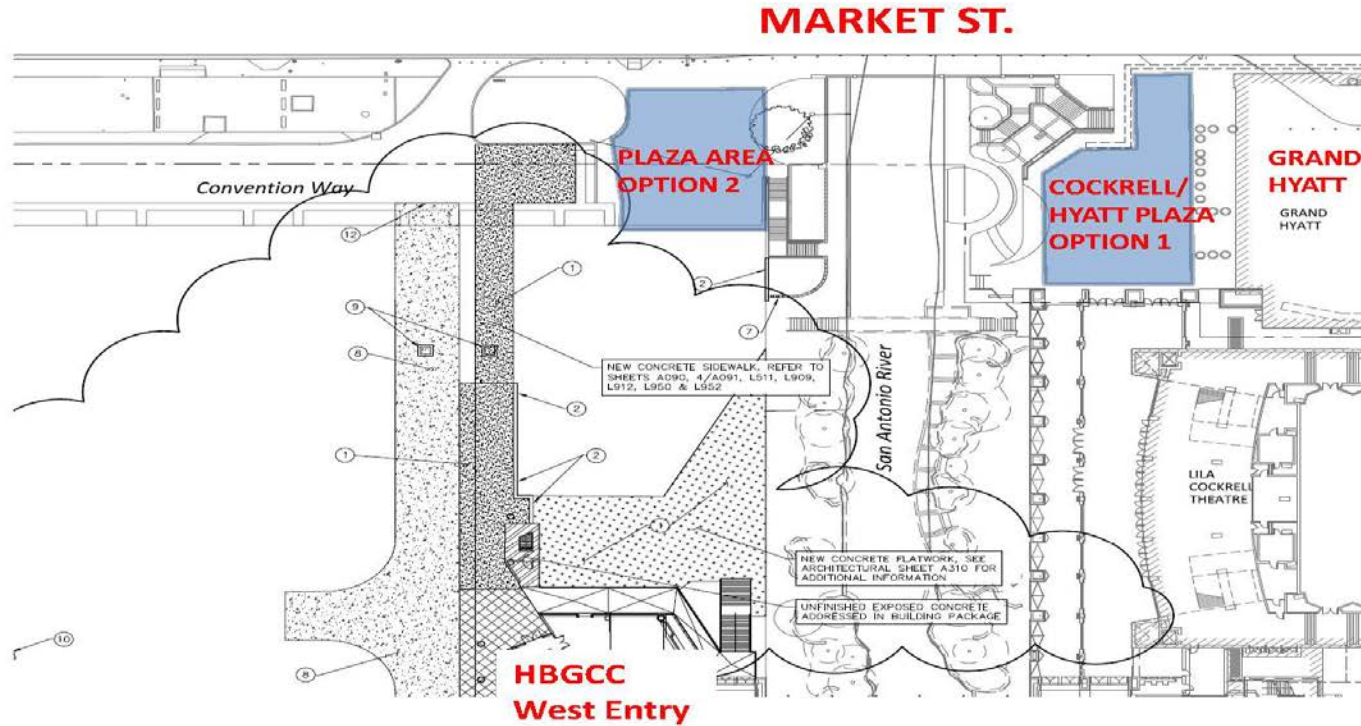
Convention Center

**COCKRELL/
HYATT PLAZA
OPTION 1**

**PLAZA AREA
OPTION 2**



Convention Center



Alamodome



Final Review of Concerns and Recommendations

Other Concerns

- ▶ Interactions with police/liaison
- ▶ Processions without a permit
- ▶ Police presence at assemblies

Staff Recommendations

- ▶ #1: Including the right to assemble within the ordinance; the ordinance will also include the right to “spontaneous assembly.”
- ▶ #2: Remove the \$75 permit fee; no cost to event organizers for traffic safety and barricades; reasonable time, place, and manner restrictions (no procession during morning or evening rush hour)

Staff Recommendations

- ▶ #3: The Aviation Department will provide the Director with flexibility to:
 1. Increase the number of persons covered by the permit; and
 2. Offer additional locations for assembly; and
 3. Create a good cause exception for the requirement to obtain a permit two business days in advance of the demonstration

Staff Recommendations

- ▶ #4: Allow CSF to implement policy for assembly and demonstration at designated locations for Convention Center and Alamodome.

Staff Recommendations

- ▶ #5: Centralized application website
 - Availability in Spanish
 - Modeled off of City of Dallas's website
- ▶ #6: Feedback mechanism
- ▶ #7: Data tracking (e.g. applications received; permits denied)

Staff Recommendations

- ▶ #8: Continued use of SAPD for traffic safety and control
- ▶ #9: Allow for use of inward-facing parade marshals
- ▶ #10: Applicants to submit the procession application 15 working days before event as opposed to 30 calendar days before event

Staff Recommendations

- ▶ #11: Continue the dialogue with concerned citizens and the Coalition regarding First Amendment issues in either monthly or quarterly meetings
- ▶ #12: Provide print materials at convenient locations (perhaps branch libraries)
- ▶ #13: Only march organizers, not the individual marchers, liable for violating permit provisions under the parade ordinance

Staff Recommendations

- ▶ #14: Police presence dictated by safety requirements
- ▶ #15: Interaction with SAPD required to develop a traffic safety plan

Going Forward

Next Steps

- ▶ Revise parade ordinance consistent with staff recommendations and present ordinance for action at future A session.
- ▶ CAO will follow up with relevant departments to provide First Amendment activities/event training.
- ▶ Continue the dialogue with concerned citizens and Coalition membership.