



# City of San Antonio

## Agenda Memorandum

**File Number:**17-4317

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**Agenda Item Number:** 3.

**Agenda Date:** 8/2/2017

**In Control:** Governance Committee

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**DEPARTMENT:** City Attorney's Office

**DEPARTMENT HEAD:** Andrew Segovia

**COUNCIL DISTRICTS IMPACTED:** All

**SUBJECT:**

Review of permitting procedures for First Amendment assembly and procession in public places

**SUMMARY:**

The City's current procedures for permitting related to First Amendment assembly and procession comply with the U.S. Constitution, and strike the delicate balance of maintaining public safety and sharing the use of public spaces, while safeguarding citizens' rights to freedom of speech and assembly in public places.

**BACKGROUND INFORMATION:**

Council Member Treviño has submitted a CCR, asking this office to reassess permitting procedures for First Amendment assembly and procession in public places and to provide options for potentially easing restrictions for demonstrations. Council Member Treviño has asked whether the standards for issuance of a permit and assessment of fees should be modified, and whether there should be an expansion of those public spaces where assembly and procession are allowed.

**ISSUE:**

Legal Overview: Regulations in Different Types of Forums. The City may impose reasonable restrictions on the time, place, or manner of protected speech in a public forum, provided the restrictions are justified without reference to the content of the speech, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication. Public forums are those places historically linked with the exercise of First Amendment freedoms, such as streets, sidewalks and parks. Non-public forums are those locations that are not historically linked to speech and assembly, or are considered to be non-public forums because such activities would be inconsistent with their use (e.g. airports, military bases, government workplaces, jails). Property that is not traditionally considered a public forum may become a designated public forum for such time as the City, by policy or practice, opens it for expressive activity. Once expanded in this manner, any subsequent regulation would have to meet the same higher standards as that required for all public

forums. Regulations limiting First Amendment protected activity conducted on property that is not traditionally considered a public forum, or is not a designated public forum, need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speakers' views.

General Access to Public Forums. Note that, except as provided herein, citizens are free to assemble or demonstrate in all public forums, so long as they do not interfere with traffic, block sidewalks, block ingress or egress into buildings, or cause interference in places where business is being conducted; and the assembly or demonstration may occur without citizens obtaining permits.

Parade Ordinance. The City does not have an ordinance that comprehensively addresses assembly and procession in all public forums. Instead, the City's parade ordinance (Chapter 19 of the City Code) requires permits only when the activity will interfere with traffic or block a sidewalk. This very limited regulation serves the objective of ensuring public safety. Assemblies or demonstrations that do not interfere with pedestrian or vehicular traffic are not regulated. The City's standards for issuance of a parade permit were upheld by the U.S. Court of Appeals for the 5<sup>th</sup> Circuit in *International Women's Day March Planning Committee, et. al. v. City of San Antonio, et al.*, 619 F.3d 346, 369 (5th Cir. 2010). These standards are designed to limit the discretion of the City staff who review permit requests, so that permits are granted, unless to do so would create a safety issue. Therefore, we do not recommend any changes to the standards for issuance of parade permits.

City Parks. Citizens may also exercise their First Amendment freedoms in City parks free from regulation in most circumstances. For example, citizens can use park pavilions or open spaces on a first-come-first-serve basis, without the necessity of obtaining a permit. Permits are only required for use of park facilities when a citizen wishes to reserve a specific location for his/her use, and for special events depending on anticipated crowd size, security needs, use of amplified sound, and when liquor will be served. (City Code, Chapter 22). These regulations do not seek to control the content of speech, but are designed to coordinate multiple uses of limited space, assure preservation of facilities, prevent uses that pose a risk to health and safety or are unlawful, and to assure financial accountability for damage caused by events held there. Because fees for use of park facilities are part of a reservation system, and are lower for non-commercial use than for commercial use, no changes are recommended.

Airports - Current Regulations. Since Courts have held that airport terminals, and associated sidewalks, and parking lots are not public forums, the City has implemented reasonable restrictions on activities that might otherwise disrupt the airport's operations, traffic flow, or passenger safety. At the City's airport, assemblies and processions are considered non-commercial activities and are addressed in Section 3-22(c) of the City Code. That section requires those wishing to assemble or demonstrate at the airport to request a permit at least 2 business days before the scheduled activity. There is no charge for the permit, but the requesting organization is limited to 3 protestors and the Aviation Director can limit the protest location. Additionally, the activities may not impair or interfere with the operational functions of the airport.

Airports - Possible Revisions. The Aviation Department is considering revisions to Section 3-22(c) that would provide the Aviation Director with more discretion to determine the number of protestors allowed at the airport and the location of the protests. Also under consideration is the creation of a good cause exception for the requirement to obtain a permit two business days in advance of the protest. Since the airport is not a traditional public forum, these revisions must balance the desire to accommodate protestors with the need to set parameters to ensure that we do not convert the airport into a public forum by allowing unrestricted protests at the airport. The ability to manage protests at the airport is important to be able to maintain uninhibited airport operations and address security concerns.

Convention Center and Alamodome. The Convention & Sports Facilities Department is developing a policy for public assemblies and demonstrations around the Henry B. Gonzalez Convention Center and Alamodome. The

policy identifies areas where groups are encouraged to assemble for the purpose of public speech. The areas were designated based on security, safety, and availability, with the goal of providing visible areas where assemblies may be heard and seen. The policy is intended to provide guidance to groups and to provide an opportunity for staff to coordinate any necessary accommodations that may be required as a result of the assembly. The policy provides staff with the ability to relocate groups or designate an alternative location when necessary, due to construction, maintenance, accessibility or public safety. Public assemblies cannot impede traffic, block ingress or egress to the facilities, or the day-to-day operations of the facilities. The parties wishing to assemble are not charged any fees. The chosen locations are all outside the facilities, and people are free to continue assembling on sidewalks surrounding the facilities, as they wish in compliance with the parade ordinance.

#### **ALTERNATIVES:**

This item is for briefing purposes only.

#### **FISCAL IMPACT:**

There is no fiscal impact associated with this briefing.

#### **RECOMMENDATION:**

This item entails a detailed discussion of Supreme Court cases regarding the First Amendment. This item has implications for the current Parade permit and several City facilities, including Airports, Parks, Convention Center and the Alamodome. Staff recommends this item be briefed to the full City Council at a “B” Session with subsequent scheduling for a future “A” Session for appropriate Code changes.