



# City of San Antonio

## Agenda Memorandum

**File Number:**17-6011

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**Agenda Item Number:** 1.

**Agenda Date:** 12/13/2017

**In Control:** City Council B Session

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**DEPARTMENT:** City Attorney's Office

**DEPARTMENT HEAD:** Andy Segovia

**COUNCIL DISTRICTS IMPACTED:** All

**SUBJECT:** Review of City's current procedures and staff recommendations for applying for and issuing permits for First Amendment assembly and procession activities.

### **SUMMARY:**

This briefing addresses Councilman Treviño's CCR and the subsequent discussion in the Governance Committee meeting on August 2, 2017 regarding the City's current procedures for applying for and issuing permits for First Amendment assembly and procession activities. The City complies with U.S. Constitution, and strikes the delicate balance of maintaining public safety, sharing the use of public spaces, and safeguarding citizens' rights to freedom of speech and assembly in public places.

### **BACKGROUND INFORMATION:**

Councilman Treviño 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. Councilman 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. These issues were discussed at the Governance Committee meeting on August 2, 2017. Members of the Free Speech Coalition who were present at the meeting voiced their concerns about the Parade Ordinance, and Mayor Nirenberg directed the City Attorney's Office to meet with the group to discuss the Ordinance.

In response, the City Attorney's Office held several meetings with the Free Speech Coalition. During those meetings, the Coalition requested Parade Ordinance revisions, no-cost First Amendment assembly and procession events, a centralized First Amendment assembly and procession application process, and a more friendly process for interaction with the San Antonio Police Department when planning a First Amendment assembly or procession.

## 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 currently 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 5th Circuit in *International Women's Day March Planning Committee v. City of San Antonio*, 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. There is one booth in terminal A and one booth in terminal B in the airport's lower level near baggage claim. 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. Because the airport is not a public forum, these revisions must balance the desire to accommodate protestors with the need to set parameters to ensure safe and efficient airport operations.

Convention Center and Alamodome. The Convention & Sports Facilities Department has developed a procedure for public assemblies and demonstrations around the Henry B. Gonzalez Convention Center and Alamodome. The procedure 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 procedure 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 procedure 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 long as a safe flow of people and vehicular traffic are maintained.

#### **ALTERNATIVES:**

This item is for briefing purposes only.

#### **FISCAL IMPACT:**

This item is for briefing purposes only.

#### **RECOMMENDATION:**

We recommend that staff bring back for full counsel consideration the following recommendations: the removal of the \$75.00 permit fee required by the Parade Ordinance; the removal of the \$3,000.00 traffic safety credit in lieu of the City absorbing all traffic safety costs; the addition of reasonable time and location restrictions for processions; continuing the current permit structure; addressing assembly within the Parade Ordinance; facilitating the development of a website containing assembly and procession event and application information; granting the Aviation Director more discretion with regard to number of persons able to assemble and demonstrate, locations where assemblies may occur, and deadlines for requesting permits; and allowing CSF to implement policy for assembly and demonstration at designated locations for the Convention Center and Alamodome to provide the public with safe gathering locations at no cost.