

An Ordinance to Replace Chapter 21-28 so as to Clarify the Distinction between Parades and Public Assemblies; Create the Category of Races; Rationalize Timelines and Appeals to the City Council; Increase Notice and Rights to Oppose; and Rationalize Fees

WHEREAS, Ordinance 4576—An Ordinance to Amend Chapter 21, Code of Ordinances, City of Memphis, So as to Establish Guidelines for Parades and Public Assemblies—was passed into law in 1998; and

WHEREAS, Ordinance 4576 sub-section (7) (b) reads “No permit shall be granted that allows for the erection of any structure, whether permanent or temporary, on a City street, sidewalk, or right-of-way unless advance approval for the erection or placement of the structure is obtained from the City Council”; and

WHEREAS, the definition of temporary structures is interpreted by this Council to include such traffic interventions as simple as traffic cones; and

WHEREAS any resident of the City of Memphis whose driveway(s) and/or street parking open out onto a Public Right-Of-Way (ROW), including City of Memphis-owned sidewalks and streets designated for public travel and municipal utilities, should have a reasonable expectation that the ROW is overwhelmingly designed to support only ingress and egress from the neighborhood and residences to navigate to and from arterial and collector roads, while protecting residents and permitting traffic flow; and

WHEREAS, the Council is aware that, year-to-date, almost 300 permit applications have been submitted to the City for temporary street closures and blockades; and

WHEREAS, since the passage of Ordinance 4576, the City has made drastic new investments in park space and bike & pedestrian infrastructure.

NOW THEREFORE BE IT RESOLVED that the Memphis City Council does hereby substitute Chapter 21-28 with the below.

CHAPTER 21-28. - Guidelines for Parades, Races, and Public Assemblies

(a) Definitions.

As used in this chapter:

City is the City of Memphis, Tennessee.

Director of police is the director of the police services division of the city or his or her designee.

Parades are processions or motorcades consisting of persons, animals, or vehicles or a combination thereof upon the public rights-of-way within the City that interfere with or have a tendency to interfere with the normal flow or regulation of traffic upon the public rights-of-way. Parade does not include a private motorcade of vehicles transporting persons within the city limits from one destination to another destination with no intent to attract public attention or interfere with the normal flow or regulation of traffic upon the public rights-of-way. Parades or Races do not include Public assemblies, as defined for and in this section.

Race is any event in which a collection of persons traverse along a set route, impeding traffic in the rights-of-way or otherwise, by foot or vehicle, motorized or otherwise, within the City.

Parade/Race Permit is a permit as required by this chapter for Parades and/or Races.

Permit Office is the office or department responsible for the issuance of any and all permits required under this chapter.

Person in this ordinance should be read to include any person or collections of persons, such as firms, partnerships, associations, corporations, companies, or organizations of any kind.

Public Assembly is any meeting, march, demonstration, picket line, rally, or gathering of more than 25 persons for a common purpose as a result of prior planning that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic or occupies any public area in a place open to the general public, to the hindrance of others, not including those spaces duly rented from an appropriate agency, including but not limited to a public park pavilion. Parades or Races may also fall under the definition of a Public Assembly if it also meets this definition.

Public Assembly Permit is a permit as required by this chapter for Public Assemblies.

Pedestrian Right-of-Way is any area or way set aside or open to the general public for purposes of pedestrian or non-motorized vehicle traffic, whether or not it is paved, and including but not limited to such pedestrian and bicycle infrastructure as greenlines, greenways, and riverwalks.

Motorized Vehicle Right-of-Way is any place or way set aside or open to the general public for purposes of motorized vehicular traffic, including any berm or shoulder, parkway, right-of-way, or median strip thereof.

Structure is any means, permanent or temporary, by which normal vehicular or other traffic is diverted or impeded in the context of Parades, Races, and/or Public Assemblies as defined in this section, including but not limited to barricades, signs, cones, ropes, and vehicles.

(b) Permit required.

No person shall engage in or conduct any parade, race, and/or public assembly unless a permit is issued by the permit office after consultation with the Director of Police, unless such event falls under one of the Exceptions as defined in subsection (c)(5) below.

(c) Exceptions.

This chapter shall not apply to the following:

- 1) Funeral processions/proceedings by vehicle under the most reasonable route from the funeral home, church or residence of the deceased to the place of interment;
- 2) Funeral-like processions/proceedings by vehicle or foot for the purposes of honoring the deceased, raising awareness of the deceased's death, and/or celebrating the life of the deceased
- 3) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
- 4) A governmental agency acting within the scope of its functions;
- 5) *Spontaneous Events* occasioned by news or affairs coming into public knowledge within seven (7) days of such public assembly, provided that the organizer thereof gives written notice to the office of the COO of the City at least 24 hours prior to such public assembly; and
- 6) Private gatherings, affairs or activities on private property that may inadvertently interfere with the normal flow or regulation of traffic upon the public streets.

(d) Application for permit.

- 1) A person seeking a Parade/Race or Public Assembly permit shall file an application with the City Permit Office on forms provided by such officer and the application shall be signed by the applicant under oath.
- 2) The application deadline for each permit types are as follows:
 - a. For parades and/or races, an application for a permit shall be filed with the permit office at least 90 calendar days and not more than 180 days before the parade or public assembly is proposed to commence. The Director of Police may waive the minimum 90 calendar day filing period and accept an application filed within a shorter period if, after due consideration of the date, time, place and nature of the parade and/or race, the anticipated number of participants, and the city services required in connection with the event, he or she determines that the waiver will not present a hazard to public safety, health, and/or welfare.
 - b. For public assemblies falling outside the Spontaneous Events exemption in Sec. 12-52-3 above, an application for a permit shall be filed with the Permit Office at least 14 calendar days and not more than 90 calendar days before the public assembly is proposed to commence.
- 3) The application for a Parade/Race and/or Public Assembly permits shall set forth the following information:
 - a. The name, address and telephone number of the Person seeking to conduct such event;
 - b. The names, addresses and telephone numbers of the headquarters of the organization for which the parade or public assembly is to be conducted, if any, and the names of the authorized and responsible heads of the organization;
 - c. The requested date of the event;
 - d. Any route to be traveled, including the starting point and the termination point;
 - e. In only the case of a Parade/Race permit and excluding those Parades and/or Races that make use of the Route Templates as defined in Sec. 12-52-6 (E), the plan for the notification of affected residents and businesses along said route and the at least seven (7) consecutive days over which that notification shall be posted, beginning no later than (3) days after the notification of receipt of the permit application

- f. The approximate number of persons who, and animals and vehicles which, will constitute such event and the type of animals and description of the vehicles;
- g. The hours when such event will start and terminate;
- h. A statement as to whether the parade or public assembly will occupy all or only a portion of the width of the streets proposed to be traversed;
- i. The location by street of any assembly areas for such parade or public assembly;
- j. The time at which units of the parade or public assembly will begin to assemble at any such area;
- k. The intervals of space to be maintained between units of such parade or public assembly;
- l. If the parade or public assembly is designed to be held by, or on behalf of, any person other than the applicant, the applicant for such permit shall file a letter from that person with the permit office authorizing the applicant to apply for a permit on his or her behalf;
- m. The type of public assembly, including a description of activities planned during the event;
- n. A description of any recording equipment, sound amplification equipment, banners, signs or other attention-getting devices to be used in connection with the parade or public assembly;
- o. The approximate number of participants (spectators are by definition not participants);
- p. The approximate number of spectators;
- q. A designation of any public facilities or equipment to be utilized; and
- r. Any additional information that either the permit office or director of police finds reasonably necessary to make a fair determination as to whether a permit should be issued.

(e) Fees.

A nonrefundable fee of \$_____ to cover administrative costs of processing the permit shall be paid to the city by the applicant when the application is filed, except in cases where the Parade or Race will require the partial or complete closure of public streets or diversion of the normal flow of vehicular traffic with structures, an additional nonrefundable fee of \$100.00 shall be paid when the application is filed.

(f) Police protection.

- 1) The Director of Police shall determine whether and to what extent a parade, race, or public assembly will reasonably require additional police protection to control traffic and preserve public safety.
- 2) The Director of Police shall base his decision on the types of public safety measures required for the proposed parade or public assembly on the size, location, duration, time and date of the event, the number of streets and intersections blocked or affected by the event, the need to detour or preempt citizen travel and use of the streets and sidewalks and realistic concerns and threats of social disorder, personal injuries, property damage and individual rights violations arising from the event. The speech content of the event shall not be a factor in determining the amount of police protection necessary, unless past experiences with similar events have demonstrated a need for additional police protection to protect event participants, spectators, passers-by and law enforcement personnel, and to preserve free speech and assembly rights of event sponsors and participants.
- 3) The Director of Police shall determine if police protection for the parade or race is deemed necessary. If so, he or she shall so inform the applicant for the Parade/Race permit. The

applicant then shall have the duty to secure the police protection deemed necessary by the Director of Police at the sole expense of the applicant, unless qualifying for full or partial exemption as defined in subsection (a) below. The Director of Police shall have the authority to enter into agreements with any applicant for additional police protection including security for the costs thereof.

- a. If applicant can provide a properly-vetted estimate of the impact of his or her event on the public revenues, as defined by the Mayor or his or her designee, such estimate of revenues can be used to offset, in part or in whole, the cost of police protection as required above.
 - b. Any hourly minimums instituted by the Director of Police at his discretion shall be waived in the case that applicant uses a parade/race route template, as defined in subsection (E) below.
- 4) The Director of Police shall be fully authorized to implement and require reasonable steps to forestall potential disorder and civil hostilities among participants, observers and opponents of a proposed event, including but not limited to: zoning of areas in proximity of the event site, crowd control measures, metal detector searches of all entrants to the event site, traffic rerouting, and cessation of street parking. Any such measures shall be narrowly tailored to advance the city's interest in public safety and protection of the rights to free speech and assembly.
 - 5) The Director of Police and/or other Administration officials shall collaborate with appropriate stakeholders to maintain a list of standard public parade and race route templates.
 - a. These templates shall be constructed to minimize the use of motorized vehicular rights-of-way, particularly at highly trafficked times of day, and to maximize the use of pedestrian rights-of-way. Similarly, therefore, these templates shall be constructed to minimize the cost of providing police protection.
 - b. The Director of Police shall bring these routes forth for Council approval at the first meeting in January each year, unless the routes have not changed from the previous year, or upon request of any Council member.
 - c. The Director of Police shall include in this presentation a standard cost of providing police protection for each route template, pursuant to the standards in this subsection.

(g) Standards for issuance.

- 1) The permit office, after consultation with the director of police, shall approve or deny, by five business days, a permit as provided for herein when, from a consideration of application and from such other information as may otherwise be obtained, it finds that:
 - a. The conduct of the parade, race, or public assembly will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;
 - b. The conduct of the parade, race, or public assembly will not require the diversion of so great a number of city police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the city;
 - c. The concentration of persons, animals, and vehicles at assembly points of the parade, race, or public assembly will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such public assembly areas;
 - d. The conduct of the parade or public assembly is not reasonably likely to cause injury to persons or property;

- e. The parade, race, or public assembly is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays in route;
 - f. Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;
 - g. The applicant has secured the police protection, if any, required under subsection (f);
 - h. Such parade, race, or public assembly is not for the primary purpose of advertising any product, goods or event that is primarily for private profit, and the parade itself is not primarily for profit. The prohibition against advertising any product, goods or event shall not apply to signs identifying organizations or sponsors furnishing or sponsoring exhibits or structures used in the parade;
 - i. No parade, race, or public assembly permit application for the same time and location is already granted or has been received and will be granted;
 - j. No parade, race, or public assembly permit application for the same time but not location is already granted or has been received and will be granted, and the police resources required for that prior parade or public assembly are so great that in combination with the subsequent proposed application, the resulting deployment of police services would have an immediate and adverse effect upon the welfare and safety of persons and property; and
 - k. No event is scheduled elsewhere in the city where the police resources required for that event are so great that the deployment of police services for the proposed parade or public assembly would have an immediate and adverse effect upon the welfare and safety of persons and property.
- 2) No permit shall be granted that allows for the erection or placement of any structure, whether permanent or temporary, on a city street, sidewalk, or right-of-way unless either no opposition has been forthcoming from the affected public or, in the case of opposition, advance approval for the erection or placement of the structure is obtained from the City Council.
- a. In the case of opposition to a permit filed for the temporary closure of a public right-of-way, the Permits office shall immediately notify Council Administration and Council Records so that an item might be added to the next scheduled City Council agendas, or in the case that the agenda has already been published, to the immediately following City Council agenda.
 - b. Permit Cases shall be heard before the Council in both the Public Safety Committee and before the Full Council on the same day.
 - c. Permit Cases shall require a simple majority of members present for approval.
 - d. Upon the Council approving, denying, or amending a permit request, the Permits Office shall approve or deny the permit application within five business days, still subject to the conditions laid out above.

(h) Nondiscrimination.

The permit office, after consultation with the director of police, shall uniformly consider each application upon its merits and shall not discriminate in granting or denying permits under this chapter based upon political, religious, ethnic, race, disability, sexual orientation or gender-related grounds.

(i) Notice of denial of application.

The permit office shall act promptly upon a timely filed application for all permits, but in no event shall grant or deny a permit less than 48 hours prior to the event. If the permit office, after consultation with the director of police, disapproves the application, it shall notify the applicant either by telephone, facsimile, personal delivery or certified mail at least 48 hours prior to the event of his or her action and state the

reasons for denial. The permit office shall develop procedures for the documentation of the proof of delivery and receipt of approval or denial.

(j) Alternative permit.

- 1) The permit office, after consultation with the Director of Police or based on the feedback of the City Council, in denying an application for any permit, may authorize the conduct of the parade, race, or public assembly at a date, time, location or route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within 24 hours after notice of the action of the permit office, file a written notice of acceptance with the permit office.
- 2) An alternate parade or public assembly permit shall conform to the requirements of, and shall have the effect of, a parade or public assembly permit issued under this chapter.

(k) Appeal procedure.

- 1) Any applicant shall have the right to appeal the Permit Office's denial of a parade, race, or public assembly permit to the City Council. The denied applicant shall make the appeal within five (5) calendar days after receipt of the denial by filing a written notice with the permit office and a copy of the notice with the city comptroller. The City Council shall act upon the appeal at the next scheduled meeting following receipt of the notice of appeal.
- 2) In the event that the City Council rejects an applicant's appeal, or in the rare event that an eligible Council meeting does not fall within the time between the denial and the proposed event, the applicant may file an immediate request for review with a court of competent jurisdiction.

(l) Notice to city and other officials.

Immediately upon the receipt or issuance, as appropriate, of a parade/race or public assembly application or permit, the permit office shall send a copy thereof to the following additional persons, whom shall have the duty to validate that no undue impacts on other City services shall occur or, in the case of impacts being ancillary and/or reasonable, that those services are prepared:

- 1) The City Attorney;
- 2) The Director of Fire Services
- 3) The City Engineer;
- 4) The Postmaster; and
- 5) The CEO of MATA

(m) Contents of permit.

Each permit shall state the following information:

- 1) Starting and approximate ending time;
- 2) Minimum speed of parade units;
- 3) Maximum speed of parade units;
- 4) Maximum interval of space to be maintained between parade units;
- 5) The portions of the rights-of-way that may be occupied by the parade, race, or public assembly;
- 6) The maximum length of the route(s) in kilometers or fractions thereof; and
- 7) Such other information as either the permit office or the director of police shall find necessary to the enforcement of this chapter.

(n) Duties of permittee.

- 1) A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.
- 2) The parade or public assembly chairperson or other person heading such activity shall carry the parade, race, or public assembly permit upon his or her person during the conduct of the parade, race, or public assembly.

(o) Prohibitions.

The following prohibitions shall apply to all permitted events as defined by this chapter:

- 1) It is unlawful for any person to stage, present or conduct any parade, race, or public assembly without first having obtained a permit as herein provided, except in case of exemptions herein provided;
- 2) It is unlawful for any person to participate in a parade, race, or public assembly for which the person knows a permit has not been granted;
- 3) It is unlawful for any person in charge of, or responsible for the conduct of, a duly licensed parade, race, or public assembly to knowingly fail to comply with any condition of the permit;
- 4) It is unlawful for any person to engage in any parade, race, or public assembly activity that would constitute a substantial hazard to the public health, safety or welfare, or that would materially interfere with or endanger the public peace or rights of residents to the quiet and peaceful enjoyment of their property;
- 5) It is unlawful for any person to ride, drive or cause to be ridden or driven any animal or any animal drawn vehicle upon any public right-of-way, unless specifically authorized by the permit; and
- 6) It is unlawful for any person participating in a parade, race, or public assembly to violate municipal ordinances regarding disorderly conduct, including but not limited to Chapter 10-8-2.
- 7) It is unlawful for any participant, spectator or person at a parade, race or assembly to possess or carry weapons in violation of any applicable law of the state of Tennessee, including but not limited to T.C.A. § 39-17-1311. Further, this ordinance shall not be construed to restrict any right to possess or carry weapons under U.S. or Tennessee constitutional or statutory law.
- 8) It is unlawful to wear a mask or disguise with the intent to violate any law of the state of Tennessee, including but not limited to T.C.A. § 39-17-309(b).
- 9) If applicant is not a resident of Shelby County, the applicant shall be required to place a surety bond and deposit equal to 50 percent of the total cost as deemed applicable by the Director of Police.

(p) Public conduct during parades or public assemblies.

- 1) No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or public assembly or with any person, vehicle or animal participating or used in a parade or public assembly.
- 2) No driver of a vehicle shall drive between the vehicles or persons comprising a parade or public assembly when such vehicles or persons are in motion and are conspicuously designated as a parade or public assembly.
- 3) The director of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade or public assembly. The director of police shall post signs to that effect, and it is unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this chapter.

(q) Revocation of permit.

The director of police shall have the authority to revoke a parade or public assembly permit instantly upon violation of the conditions or standards for issuance as set forth in this chapter or when a public emergency arises where the police resources required for that emergency are so great that deployment of police services for the parade or public assembly would have an immediate and adverse effect upon the welfare and safety of persons or property.

(r) Violations—Fines and penalties.

Any person violating the provisions of any section of this chapter shall, upon conviction, be punished by a fine not to exceed \$50.00 and any other penalties which may be applicable.