

City of Houston, Texas, Ordinance No. 2007- 656

AN ORDINANCE AMENDING SECTION 40-27 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO STREET FUNCTIONS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That Section 40-27 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 40-27. Street functions.

(a) **Permit required.** It shall be unlawful for any person to use a public street or portion thereof for the purpose of conducting or holding a street dance, block party, fun run or other pedestrian or wheelchair race, bicycle race, festival, or other function requiring the closing of the street or a portion thereof to normal vehicular traffic, unless the function is being conducted in compliance with a permit issued under this section.

(b) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Central business district has the meaning ascribed in section 42-1 of this Code.

Civilian traffic controllers means civilian police department personnel deployed to assist in providing traffic control services during duly authorized parades, street functions, and special events. Civilian traffic controllers shall be under the direct supervision of police department law enforcement officers certified under the laws of this State.

Major function, for purposes of the review of applications under this section, means any function that will involve the closure of any portion of a major thoroughfare or major collector street, except:

- a. A function in the nature of a race or fun run in which the participants follow prescribed routes and is conducted in such a manner that the streets may be closed and opened on a rolling basis as the participants pass; or

- b. A function conducted within the central business district, including that portion of Allen Parkway between Bagby Street and Shepherd Drive, and Memorial Drive between Bagby Street and Waugh Drive, provided that the function will not cause the closure of any street during the hours of 7:00 a.m. through 6:00 p.m. on any day that is not a Saturday, Sunday or holiday observed by the closure of city offices.

Mayor's office of special events ('MOSE') shall mean the office, person, or city staff designated by the mayor to manage, administer, and/or issue parade, street function, and special event permits.

Minor function, for purposes of the review of applications under this section, means any function that is not a major function as defined herein.

Police chief means the chief of the police department or the chief's designee.

PWE director means the director of the public works and engineering department or the director's designee.

Security control plan means a demonstration of the use of non-city personnel to provide the appropriate public security and crowd control during a parade, street function, or special event. Such a plan shall be subject to the written approval of the police chief.

Security control services means the use of the appropriate number of law enforcement officers necessary to monitor and maintain public security and crowd control during a parade.

Special events manager ('SEM') means the individual who oversees the operations of the mayor's office of special events or the SEM's designee.

Traffic control plan means a written proposal for the operation and regulation of traffic control devices used to facilitate vehicular and pedestrian traffic safely and efficiently through a temporary traffic control zone. A traffic control plan must be prepared in conformance with the Texas Manual on Traffic Control Devices.

Traffic control services means the use of cones, barricades, and any other traffic control devices necessary to facilitate vehicular

and pedestrian traffic safely and efficiently through a temporary traffic zone.

(c) **Permit issuance.** Permits under this section shall be issued by the SEM. In compliance with the procedures set forth in subsection (k) below, the SEM, in conjunction with the PWE director, shall approve the application for a permit unless the SEM determines that the proposed function will unreasonably interfere with the flow of traffic or with the use and enjoyment of properties, whether used for residential, commercial or other purposes, in the vicinity of the function or unless the applicant fails to evidence that it will comply with any of subsections (d) through (j), below. The SEM may condition approval upon full compliance with subsections (d), (f) or (j) below if the applicant has not yet provided cost deposits or the requisite proof of insurance as specified therein. In determining whether the event will unreasonably interfere with the flow of traffic or with the use and enjoyment of properties in the vicinity of the function, the SEM and PWE director shall consider:

- (1) The expected general flow of traffic upon the street or streets affected at the time proposed for the event;
- (2) The existence, if any, of alternative routes for public transit vehicles and private vehicles;
- (3) Whether the function will significantly affect the city's ability to deliver police, fire and medical emergency services to the function site and in the vicinity of the function site;
- (4) The availability of public parking, public restroom facilities, public trash receptacles and other amenities in the vicinity where the function will be conducted to accommodate the number of persons that are expected to attend the function;
- (5) Whether the function will include amplified music or other sound sources that may be expected to create a noise disturbance; and
- (6) The extent, if any, of disruption to the use and enjoyment of residential, business, industrial and governmental facilities located in the vicinity of the proposed function.

In considering the foregoing criteria, the SEM and PWE director shall review records, if any, from prior similar events conducted at or near the proposed site, whether conducted by the applicant or others, and the applicant's prior history of compliance, if any, to determine whether there has been a history

of traffic control problems, littering and trash removal problems, noise or other disruptions associated with the event or other events conducted by the applicant.

(d) **Police review.** Each application shall be referred by the SEM to the police chief for a determination of the law enforcement officer staffing reasonably required to provide security control services for the function and service calls relating to the function, including not only the street or streets to be closed but any other streets or public areas in the vicinity that may be utilized for alternative routes or for parking of vehicles of persons attending the function. In making the foregoing determination, the police chief shall consider whether alcohol will be served or allowed at the function as a factor in establishing the appropriate staffing level. The applicant must agree to either:

- (1) Pay to the city the total salary cost(s) of providing the designated number of law enforcement officers, required supervisory personnel, and civilian traffic controllers, in which instance the applicant shall furnish a deposit sufficient to cover the cost of the same not less than 10 business days prior to the event; or
- (2) Furnish the police chief with a security control plan detailing the proposed number of law enforcement officers certified under the law of this state who will provide security control services during the proposed event. Such law enforcement officers shall be paid directly by the applicant. However, no law enforcement officer who is regularly employed by the city may be utilized under this item (2) unless the officer executes an understanding of third party compensation provided by the city for working at the event. The understanding of third party compensation shall be in a form approved by the city attorney;

provided that, consistent with the analyses of security, traffic and crowd control needs and in order to maintain a command structure for the function, the police chief may require that all or a portion of the designated number of peace officers be on-duty Houston police officers for which the applicant shall make payment to the city under item (1) of this subsection.

(e) **Emergency response capability.** The applicant must agree to conduct the function in such a manner that at least one lane of the street or streets to be utilized will be capable of being opened at all times for access by persons requiring emergency access to properties abutting the function and by police, fire, ambulance and other emergency vehicles. The applicant must also agree to provide a person on-site during the function to coordinate

response activities with city officials. Consistent with the nature and size of the function, the applicant must also agree to provide a public address system for the function site if the police chief determines that the system is necessary or desirable to facilitate emergency responses during the function.

(f) **PWE review: traffic control plan.** Each application shall be referred by the SEM to the PWE director for a determination of traffic control services reasonably required for the proposed street function. Based upon availability of the city resources and city personnel, the PWE director shall either:

- (1) Elect to establish a plan for the deployment of the appropriate traffic control services, such as cones, street barricades, and signage, as required for the proposed street function; or
- (2) Require the applicant to submit a traffic control plan for review and subsequent approval by the traffic engineer.

(g) **Payment of traffic control services.**

The applicant must agree to either:

- (1) Pay the costs of providing public works and engineering department employees to deploy and remove the traffic control services if the PWE director determines that the city does not have available the resources and personnel necessary to deploy the appropriate traffic control services for the proposed street function. Such costs must be paid not less than 10 business days prior to the proposed street function date; or
- (2) Hire and pay all personnel necessary to deploy and remove traffic control services as required for the proposed street function.

(h) **Disposition of fees.** All costs recovered in relation to the provision of city security control and traffic control services shall be allocated to the city's general fund administered by the finance and administration department.

(i) **Indemnification.** The applicant and any other persons on whose behalf the application is made must covenant and agree that they will, jointly and severally, indemnify and hold the city harmless against liability for any and all claims, judgments and associated legal expenses and costs and for claims and litigation arising out of the function including, but not limited to,

those for damage to property or injury to or death of persons. The agreement shall be in a form approved by the city attorney.

(j) **Insurance.**

- (1) The applicant shall continuously and without interruption, during the course of the function, maintain in force the required insurance coverage specified in this subsection. Such insurance shall consist of a commercial general liability insurance policy covering the function with limits in an amount not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate.
- (2) The SEM may increase, decrease, or waive the amount of insurance required for the proposed street function based upon an evaluation of the criteria set forth in item (3) of this subsection. The applicant shall furnish the requisite proof of insurance to the SEM. All proof of insurance shall bear on its face, or by endorsement, that the insurer will provide the city with 15 business days advance written notice of cancellation of the requisite insurance. The policy or a binder evidencing the policy shall be furnished at least 10 days prior to the commencement of the event. The policy shall name the city as an additional insured and be issued by a carrier authorized or eligible to transact business in Texas. Each policy shall contain an endorsement that the issuer waives any claim or right of subrogation to recover against the city, its officers, agents, or employees. Each policy shall be reviewed by the city attorney for conformity with this subsection.
- (3) Except for events in which the sale of alcoholic beverages is authorized, the SEM may decrease or waive insurance requirements after receipt of a written request from the applicant. The determination to increase, decrease, or waive any insurance requirements shall be based upon an evaluation of the proposed street function utilizing the following criteria:
 - a. The size, duration, and scope of the event, including the number of projected attendees, attractions, and location of the event;
 - b. Whether food, beverages, alcoholic beverages, and/or non-food items are being sold or served;

- c. Whether the event requires the provision of utility services or the erection of temporary structures;
- d. Whether the event poses any traffic and pedestrian safety concerns; and
- e. The risks inherent with respect to the proposed street function.

(k) *Application filing and review generally.*

- (1) Applications for functions shall be filed on a form promulgated by the SEM. An application for a function may be filed with the SEM no sooner than 365 days prior to the commencement date of the function, provided that if the 365th day falls on a Saturday, Sunday, or day observed as a holiday for employees of the city, then the application may be filed no earlier than the next day that is not a Saturday, Sunday, or holiday observed by the closure of city offices. Prematurely filed applications, or applications that do not meet all requirements of this section, shall be of no force and effect and shall be returned to the applicant. An application for a major function shall be filed not less than 120 days prior to the commencement date of the function. An application for a minor function shall be filed not less than 40 days prior to the commencement date of the function, provided that: (i) an applicant for a minor function who wishes to retain the right of an appeal to city council shall file an application more than 120 days prior to the commencement date of the function, and (ii) applications for minor functions that require the closure of a freeway entrance or exit ramp shall be filed not less than 90 days prior to the proposed event date. Applications shall be filed in accordance with forms and procedures promulgated by the SEM.
- (2) Applications for minor functions shall be considered in accordance with this item. The SEM shall approve or deny each application for a minor function within 10 business days after the completed application is received. In the event that a minor function application is denied, the SEM shall mail written notice of the grounds to the applicant. A minor function applicant whose application is denied may request a hearing on the matter by filing a written request with the SEM within ten days following the date the SEM mails the notice of denial.

(3) Applications for major functions shall be considered in accordance with this item:

a. The SEM shall review the application and advise the applicant whether it is materially complete and in proper form within 10 business days following the receipt of the application. If it is not, the application shall be returned to the applicant with a written explanation of the deficiencies.

b. If the application is determined to be complete and in proper form, the SEM shall cause notice of the application filing to be advertised in one or more of the following manners as determined to be applicable by the SEM, based upon the nature and location of the major function:

[1] Advertisement one time in a newspaper of general circulation and/or in one or more community newspapers that serve the area where the major function will be conducted;

[2] Posting of one or more placards along the major thoroughfare or major collector street where the major function will be conducted; and

[3] Furnishing of a written notice by regular mail to the last known address of any person who has in writing requested notice from the SEM of any permit application for a major function to be held in the vicinity where the major function is proposed to be conducted.

The SEM may require the applicant to provide or pay for newspaper notices or placards posted and to furnish evidence thereof to the SEM. The notice(s) shall be in a form prescribed by the SEM and shall contain the name of the event, date or dates of the event, streets, roadways, and thoroughfares effected by the event, and a city office telephone number that interested persons may call for further information. The placard shall not contain advertising, including but not limited to any information concerning the name or logo of any sponsor, or any persons making a contribution to, or endorsement of, the proposed major function. If the

applicant fails to promptly give the notices or provide security for the notices following the SEM's request, the SEM shall return the application to the applicant.

- c. If, following the completion of the publication and/or mailing of the notices, the SEM receives written notice from any person who resides or works or who owns or operates a place of business in the vicinity of the proposed major function and whose interests may be affected by the major function, the SEM shall conduct, or designate another person as hearing officer to conduct, a hearing regarding the application to determine whether the permit may be issued in compliance with this section. A person who gives such notice shall upon request be allowed by the SEM to intervene and participate in the hearing as a party-intervenor thereto. Such written notice must be received by the SEM not later than 90 days prior to the proposed street function date.
- (4) Hearings conducted under this subsection, whether for minor functions under item (2) or major functions under item (3) shall be governed by rules established by the SEM, which shall be consistent with principles of due process and shall provide that any party may be represented by legal counsel, may call witnesses and provide evidence and may cross examine witnesses. The burden shall be upon the applicant to demonstrate by clear and convincing evidence that the proposed function will comply in all respects with each requirement of this section. The hearing shall be conducted by a hearing officer appointed by the chief administrative officer who shall issue a decision in writing and shall specify the grounds for denial therein if the application is denied. A copy shall be mailed to the applicant and any intervenors. Upon request of the SEM, the legal department shall act as counsel to the hearing officer.
 - (5) Each application for a street function permit must be accompanied by a non-refundable fee of \$50. All tendered fees must be in the form of a cashier's check or money order payable to the city.
 - (6) Applications for street function permits shall be accepted by MOSE between the hours of 8:00 a.m. and 5:00 p.m., except

on Saturdays, Sundays, and days observed as holidays for employees of the city.

- (7) The SEM may require that an applicant to modify any portion of the proposed event location, subject to the review and written approval of the PWE director and police chief, if:
 - a. The PWE director and police chief determine that the time, route, or size of the proposed event will substantially disrupt the use of any street that is ordinarily subject to significant traffic congestion;
 - b. The SEM is unable to secure the requisite approval of the use of any freeway entrance and/or exit ramps or any portion of a state-owned highway or road included in the event; or
 - c. The PWE director and police chief determine that the proposed event will substantially affect the city's ability to deliver police, fire, and medical emergency services to the proposed event location and in the vicinity of the proposed event location.

The applicant shall provide the requisite modified event location not more than two calendar days after receipt of notice from the SEM.

- (l) ***Reasons for denial of a street function permit.***
- (1) The SEM may deny a street function permit if the applicant has failed to meet any of the requirements for submitting an application for a street function permit.
- (2) The SEM may also deny a street function permit if, after reviewing the application:
 - a. The applicant demonstrates an inability or unwillingness to conduct a street function pursuant to the terms and conditions of this section;
 - b. The applicant demonstrates an inability or unwillingness to conduct a street function pursuant to the terms and conditions set forth in the street function permit application;

- c. The applicant has failed to conduct a previously authorized street function in accordance with law or the terms of a previously issued street function permit, or both;
 - d. The street function will significantly affect the ability of the city to render necessary services to its residents, based upon its equipment and personnel resources and other ongoing functions and responsibilities of its affected departments, including the police, fire, and public works and engineering departments; or
 - e. The applicant has been informed that the proposed street function location must be modified in accordance with item (7) of subsection (k) above and the applicant fails or refuses to modify the proposed street function location.
- (m) ***Revocation of a street function permit.***
- (1) A street function permit may be revoked if the SEM determines that:
- a. A violation of any condition of the permit exists, including failure to obtain written approval for any security or other plans required under this Code or to implement any such plans;
 - b. The street function poses an immediate threat to health or safety;
 - c. The street function organizer or any person associated with the event has failed to obtain any other permit required pursuant to this Code or other applicable law;
 - d. The street function permit was issued in error or contrary to law; or
 - e. The applicant demonstrates an inability or unwillingness to conduct a street function pursuant to the terms and conditions set forth in the street function permit application.

- (2) Any threat to health or safety requiring immediate revocation of a permit shall authorize the SEM or any other person authorized by the city to notify the event organizer verbally of such revocation.
- (3) Except as provided in item (2) of this subsection, notice of revocation shall be in writing and set forth specifically the reasons for the revocation.
- (4) The appeal of a revocation shall be handled in the same manner and under the same time requirements as denials of permits.

(n) **Hearings.** Where a right of appeal to city council exists, hearings shall be recorded by a court reporter retained by the SEM for that purpose. The SEM may require the applicant to provide security for the cost of recording the testimony as a condition of conducting the hearing.

- (1) If an application for a major function is denied following a hearing, the applicant may appeal the decision to city council. If an application for a minor function is denied following a hearing, the applicant may appeal the decision to city council if the permit application was filed more than 120 days prior to the commencement date of the minor function. If a major function permit is granted, any person who has been given party status as an intervenor may appeal the decision to city council.
- (2) Where a right of appeal to city council is not available, the decision of the hearing officer shall exhaust the applicant's administrative remedies regarding the denial of a permit application for a major or minor function.

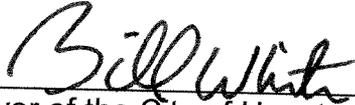
Any appeal must be filed with the city secretary within ten days following the date that the SEM mails notice of the decision to the parties. The appeal shall be considered on the record as provided in city council rule 12 (section 2-2 of this Code). The cost of the recording and transcription of the record shall be paid by the appellant, and the SEM or city secretary may require the appellant to provide security therefor as a condition of processing the appeal. Appeals shall be governed by the criteria set forth in subsections (c), (l), and (m) above.

(o) Except for the applicable definitions found in subsection (b), the provisions of this section shall not apply to parades and processions conducted under article IX of chapter 45 of this Code or to functions conducted under the sponsorship of the city, as determined by motion, resolution or ordinance adopted by the city council, or by order of the Mayor."

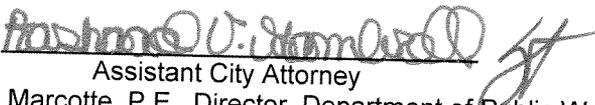
Section 2. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 3. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 6th day of June, 2007.



Mayor of the City of Houston

Prepared by Legal Dept. 
RVG:asw 05/22/2007 Assistant City Attorney
Requested by Michael S. Marcotte, P.E., Director, Department of Public Works & Engineering
L.D. File No. 0630600170001