

ORDINANCE NO. 2005- 11

AN ORDINANCE AMENDING THE BOERNE CITY CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, CHAPTER 16 - PARKS AND RECREATION; ADDING A NEW SECTION TITLED SPECIAL EVENTS, AND RE-NUMBERING THE REMAINING SECTIONS

WHEREAS, the primary purpose of parks is to provide the public the opportunity to enjoy natural beauty and recreational opportunities and the primary purpose of streets and sidewalks is to provide a public right of way for a wide variety of transportation uses; and

WHEREAS, another important use of parks, streets, sidewalks, and other public places is to provide venues for a wide variety of public events and for the public to exercise their rights of free speech and assembly; and

WHEREAS, most events in public places require a special event permit, and many require considerable advance planning by more than one City department, sometimes in conjunction with other governmental agencies, in order to adequately protect public safety; and

WHEREAS, the City has a compelling need to coordinate its planning for proposed special events in order to protect public health and safety and reduce adverse impacts such as noise, congestion, traffic, and parking problems, while guaranteeing the public's rights to free speech and assembly; and

WHEREAS, the City has no interest in regulating events that take place on private property, but does have a direct interest in regulating and planning for that portion of an event that occurs in public places such as parks, streets, and sidewalks; and

WHEREAS, the City does recognize that events that may occur at least in part on private property may also have a substantial impact on public places and require substantial public services such as police for crowd or traffic control; and

WHEREAS, if a proposed event is reasonably anticipated to take place at least in part in public places and to require substantial public services to deal with the impacts of the event on those public places (such as the reallocation of police personnel from their standard assignments in other geographic areas of the City thereby potentially jeopardizing essential police/public safety services to those neighborhoods), the City has a legitimate interest in requiring the event organizer to plan for the event's impact upon those public places and to apply for and receive a special event permit; and

WHEREAS, the City of Boerne, working with organizers of proposed events, develops reasonable permit conditions in order to protect public health and safety and reduce adverse impacts such as noise, traffic, and parking problems, while guaranteeing the public's rights to free speech and assembly; and

WHEREAS, the City has no interest in basing special event permitting decisions, including decisions regarding reasonable permit conditions, on the viewpoint or message of the proposed event, but does have the responsibility to develop reasonable and effective permit conditions based upon such public safety factors as anticipated crowd size; the nature of the event; anticipated crowd, pedestrian, and traffic control issues; anticipated noise, congestion, and

parking problems; and the history of problems associated with the event or similar events and the event's or event organizer's compliance with previous permit conditions designed to deal with those issues and problems; and

WHEREAS, the City wants to provide event organizers with an efficient permitting process, and when permits are denied, prompt administrative review of permit denials;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

That The Code of Ordinances, City of Boerne, Texas, is hereby amended by adding a section to be numbered VII, and re-numbering the remaining sections, which said section reads as follows:

Section VII. Special Events

A. Purpose and Policy

Special events are of infrequent occurrence and temporary nature and may be associated with promotions, holidays, festivals, etc. Special events may be allowed by a special events permit granted by the City Manager or his designated representative.

B. Definitions

The following terms, when used in this chapter, shall have the following meanings:

1. **“Applicant”**, Applicant shall include the person, or other entity applying for the special event permit. Applicant shall include, but not be limited to, the event's sponsor, organizer, or promoter.

2. **“Special Event”**, means any meeting activity, gathering, or group of persons, animals or vehicles, or any combination thereof, having a common purpose, design or goal, upon a public facility, street, sidewalk, park, waterway, or other place open to the public, where the special event substantially inhibits the usual flow of pedestrian or vehicular traffic or which occupies any public area and preempts use by the general public. A special event shall include, but shall not be limited to a festival celebration, concert, parade, block party, athletic event and other similar gathering which meets one or more of the following; 1) is reasonably expected to cause or result in more than two hundred people gathering in a park or other public place; 2) is reasonably expected to have a substantial impact on such park or other public place; and 3) is reasonably expected to require the provision of substantial public services.

3. **“Park”**, means all parks and bodies of water contained therein, squares, drives, parkways, boulevards, trails, golf courses, museums, aquaria, zoos, beaches, playgrounds, playfields, botanical gardens, greenbelts, parking lots, community centers and other park, recreation and open space areas and buildings and facilities comprising the parks and recreation system of the City under the management and control of the City of Boerne.

4. **“Public Place”**, means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

5. “**Substantial impact on a park or other public place**”, means an event which would preclude in whole or in significant part the public’s normal and customary use of such park or public place.

6. “**Substantial public services**”, means a material increase in the amount, scope, or level of necessary fire, police, traffic control, crowd control, or other public services above those that would normally be required without the event. With respect to police resources, “substantial public services” means resources for crowd management or traffic control required for the event over and above the normal deployment of police in that geographic area of the city at the time of day during which the event will occur.

7. “**Athletic Event**”, shall mean an occasion in which a group of persons collect to engage in or watch a sport or form of exercise on private or public property not designed for such activity and/or on a city street, sidewalk, alley, or other street right-of-way, which obstructs, delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws or controls. Athletic events include, but are not limited to, bicycle and foot races.

8. “**Block Party**”, shall mean a festive gathering on private property or a street which may or may not require the closure of a street, or a portion thereof, to vehicular traffic, and/or use of the street for the festivity including barbecues, picnics, music or games.

9. “**Parade**”, shall mean a march or procession consisting of any number of persons, animals, or vehicles, or a combination thereof, on any city street, sidewalk, alley, or other right-of-way, which obstructs delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws and controls.

10. “**Permit Application Fee**”, shall mean the fee to be paid by the special event permit applicant at the time the application is filed with the City. Such fee shall be set by the City Council.

11. “**Refundable Deposit**”, shall mean the amount of money required of a permittee by the City in order to assure adequate cleanup of the special event site. The deposit shall be returned to the permittee upon the completion of the event and approval of the Parks and Recreation Department.

12. “**Special events permit**”, shall mean the permit issued by the City Manager or his designated representative after the applicant has met all applicable reviews and requirements set forth in this chapter.

13. “**Entertainment Areas**”, shall be the area(s) designated by the City Manager or his designated representative as an area within specific boundaries in which a permitted special event may take place. Special event vendors will be allowed within the boundaries of the entertainment areas with proper permitting and approval of the City Manager or his designated representative.

14. “**Special Event Vendor**”, shall be a permitted vendor allowed to operate within entertainment areas during permitted special events.

C. Exceptions

The provisions of this chapter shall not apply to:

- (a) Funeral processions;
- (b) Groups required by law to be so assembled;
- (c) Pedestrian processions along a route that is restricted to sidewalks and crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls; and
- (d) Activities and events deemed by the City Manager or his designated representative to not require a special events permit.

D. Administration

The City Manager or his designated representative shall, after consultation with appropriate departments and agencies, have discretionary authority regarding special event permits. The City Manager or his designated representative may approve, modify, or condition an application for a special events permit.

E. Special Event Permit Required

A special event permit from the City Manager or his designated representative is required for any special event, as defined in this chapter, except that no special event permit shall be required if the event sponsor, organizer, or other party and the City have entered into a written agreement covering the same matters as would otherwise be included in a special event permit for such an event. Such special event permit shall be in addition to any street or park use permits, or other regular permits as may be required by ordinance.

When a special event permit is required, the City Manager or his designated representative shall, after reviewing the application and if necessary meeting with the organizer, advise the organizer of all other permits that appear to be required for the event based on information contained in the application; and assist the organizer in contacting other departments to apply for all other permits in a timely manner.

F. Permit Fee

The fee for issuance of a special events permit is found in the City's Fee Ordinance which is on file in the office of the Parks and Recreation Department.

G. Exemptions

- (a) No fee shall be imposed when prohibited by the First and Fourteenth amendments to the United States Constitution.

(b) No fee shall apply to a block party that occurs on private property and fees may be waived for special events sponsored by nonprofit agencies and which further the goals and objectives of the City.

H. Special Event Permit Application

(a) Any person wishing to sponsor a special event must apply for a special event permit by filing an application with the City Parks & Recreation Department thirty days prior to the date on which the event is to begin to occur.

(b) The City Manager or his designated representative shall issue the special events permit once the application has been approved after review of appropriate agencies to include police, fire, public works, building and planning, parks and recreation, and others as determined by the City Manager or his designated representative, and the applicant has agreed in writing to comply with the terms and conditions of the permit.

(c) The City Manager or his designated representative shall approve, conditionally approve, or deny an application based on the recommendations of city departments involved in the review process.

I. Conditions Authorized

The City Manager or his designated representative may include in a special event permit, among other provisions, reasonable terms or conditions as to the time, place and manner of the event; the implementation of a plan presented by the applicant and approved by the City for crowd control, traffic control, and security; compliance with health and sanitary regulations as explicated by the Health Department for the event; coordination with the Fire Department or medical personnel for emergency treatment and evacuation of people who may need immediate care, cardio-pulmonary resuscitation or ambulance service; emergency communication; fire suppression equipment with structures; maintenance of unobstructed emergency passageways; and, where traffic congestion may be anticipated, encouraging the use of public transit and car pooling. In determining conditions, the City Manager or his designated representative shall consider anticipated impacts of the event based on an assessment of the event, including size, scope, complexity, and history as well as the event's or event organizer's successful implementation of conditions included in previous permits. Conditions shall be based upon projected impacts on public safety, public places and public services, but shall not be based upon the programming content of the event or message that the proposed event may convey.

In order to accommodate other concurrent events, the rights of abutting owners, and the needs of the public to use streets or parks, the conditions may include, but are not limited to, reasonable adjustments in the date, time, route or location of the proposed event; accommodations of pedestrian or vehicular traffic using the street; and limitations on the duration of the event.

J. Denial or Revocation of Permit

1. **Denial:** A special event permit may be denied based upon a determination that:

- (a) The proposed event would unreasonably disrupt the orderly or safe circulation of traffic or as would present an unreasonable risk of injury or damage to the public; or
- (b) The event would seriously inconvenience the general public; or
- (c) The event would unreasonably infringe upon the rights of abutting properties; or
- (d) The proposed event is proximate to another previously permitted or previously scheduled event, so that the combined impacts and required public services exceed what the City, after reasonable efforts have been made to accommodate both events, can reasonably provide; or the proposed event would interfere with construction or maintenance work in the immediate vicinity, or unreasonably infringe upon the rights of abutting properties; or
- (e) There are not sufficient safety personnel or other necessary city staff to accommodate the event; or
- (f) The applicant failed to complete the application form after being notified of the additional information or documents required; or
- (g) The applicant supplies false or misleading information; the applicant fails to complete the application or to supply other required information or documents; or the applicant declares or shows an unwillingness or inability to comply with reasonable terms or conditions contained in the proposed permit; or
- (h) The applicant cannot meet, or is unwilling to meet, all of the requirements of this chapter or any special conditions imposed by any of the reviewing agencies; or
- (i) Other issues in the public interest were identified by the City Manager or his designated representative; or
- (j) Failure to prepay expenses.

2. **Revocation:** The City Manager or his designated representative may cancel or revoke a permit already issued upon written notice to the applicant stating the grounds for revocation if:

- (a) The applicant, in the information supplied, has made misstatement of a material fact; the applicant has failed to fulfill a term or condition of the permit in a timely manner; or the check submitted by an applicant in payment of the fee for a permit has been dishonored; or
- (b) The applicant requests the cancellation of the permit or cancels the event; or
- (c) An emergency or supervening occurrence requires the cancellation or termination of the event in order to protect the public health or safety. The City shall refund the permit fee in the event of a revocation caused by an emergency or supervening occurrence; the City shall refund the balance of the fee less its costs incurred if the cancellation occurs at the request of an applicant who is in compliance with this chapter.

K. Indemnification

Prior to the issuance of the special event permit, the applicant must agree to reimburse the City for any costs incurred by the City in repairing damage to City property occurring in connection with the permitted event.

Permittee agrees to defend, indemnify and save harmless the City, its appointed and elected officers and employees from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected officials or employees for damages because of personal or bodily injury, including death at any time therefrom, sustained by any person or persons and on account of damage to property or loss therefrom, arising out of any activity under or in connection with the special event, except only such injury as shall have been occasioned by the sol negligence of the City, its appointed or elected officers or employees.

The City Manager or his designated representative has the authority to require a refundable deposit as suggested by the Parks and Recreation Department for reimbursement of the costs for cleanup services.

L. Insurance Required

As required by the City Manager or his designated representative, the permittee shall provide the City with proof of commercial general liability insurance generally in the amount of one million dollars combined single limits per occurrence, and an endorsement naming the City of Boerne as an additional insured must be provided.

Certificates of Insurance shall be submitted to the City for approval no less than fifteen working days prior to the event. Acceptability of insurance is subject to approval by the City's legal counsel.

M. Entertainment Areas & Special Event Vendors

(a) The City Manager or his designated representative shall have the right to designate the entertainment areas for permitted special events. Entertainment areas may include by not be limited to streets that have been approved for closure and public areas.

(b) Special event vendors within entertainment areas:

- 1) will be allowed within the designated entertainment area with approved permit issued by the City Parks & Recreation Department;
- 2) all special event vendors located in entertainment areas must apply for a special event vendor permit and be approved by the City Manager or his designated representative.
- 3) the fee for issuance of a special events vendor permit shall be set by ordinance of the City Council.

- 4) the City Manager or his designated representative reserves the right to determine location of special event vendors within entertainment areas.

READ and APPROVED on this the _____ day of _____, 200__.

READ, APPROVED and ADOPTED on this the _____ day of _____. 200__.

APPROVED:

Mayor

ATTEST:

City Secretary