

**ORDINANCE NO. O-2015-33**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 17, "STREETS AND TRAFFIC", ARTICLE I., "STREET RENTAL AND PARADES", BY CLARIFYING AND STREAMLINING THE PROCESS AND FEES FOR OBTAINING RIGHT-OF-WAY USE EASEMENTS, TEMPORARY LANE OR STREET CLOSURES, AND PARADE PERMITS; PROVIDING FOR PENALTIES; AND RE-NUMBERING CERTAIN SECTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; ESTABLISHING AN EFFECTIVE DATE; AND ESTABLISHING AN EXPIRATION DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

**WHEREAS**, the City of Tyler has established regulations related to use of public right-of-way in City Code Chapter 17; and

**WHEREAS**, it is important to clarify and streamline the process and fees for obtaining right-of-way use easements, temporary street or lane closures, and parade permits; and

**WHEREAS**, it is important to re-number certain sections in Chapter 17, Article I; and

**WHEREAS**, major recommended substantive amendments were reviewed and recommended by the Traffic Safety Board;

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

**PART 1:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I, "Street Rental and Parades", is hereby amended by amending Section 17-1 to read as follows:

**Sec. 17-1. Use and fees.**

- a. Anyone other than City franchisees desiring to use a portion of public right-of-way, space, lane or street for a private business or personal use must first obtain a right-of-way from the City.

- b. Applications for easements for right-of-way use that are permanent in nature, and for right-of-way uses that are temporary or for a limited number of years, shall be filed with the City Engineer or designee. Such applications must include a detailed specific map and/or drawing of the location, description of the type of use, length of time needed, and payment of the application fee.
- c. Easements that are permanent in nature shall require approval of the City Council prior to issuance.
- d. Applications for right-of-way use easements that are temporary or for a limited number of years, shall require approval of the City Engineer or designee. If the City Engineer or designee determines that the circumstances or length of time of a proposed use are such that City Council review is desirable, the City Engineer or designee may submit the request to the City Council for approval.
- e. Fees for applications filed with the City Engineer pursuant to subsection b:
  - 1. Right-of-way use easement, permanent in nature - Three hundred fifty dollars (\$350.00), payment due prior to issuance.
  - 2. Right-of-way use easement, temporary or for a limited number of years - One hundred dollars (\$100.00) review fee plus one hundred dollars (\$100.00) per year times the number of years of easement, payment due prior to issuance. If the closure of a space, lane, street, or portion thereof will affect the normal flow of traffic and/or function of vehicular traffic, a Temporary Street or Lane Closure Application will need to be filed with the Police Department in accordance with subsection h. or i. below, as applicable, in addition to the right-of-way use easement. There shall be a fee of seventy-five dollars (\$75.00) for the City's costs associated with such Temporary Street or Lane Closure pursuant to subsection h. or i., which shall be in addition to the right-of-way use easement fee in subsection e.2. of this Section.
- f. Any person aggrieved by the granting or denial of a right-of-way use easement application by the City Engineer or designee under Subsection d. may appeal the action within ten (10) calendar days from the date of action in accordance with Chapter 1, Article IV.
- g. Other fees. The City Manager may recommend that additional fees be charged due to unusual circumstances such as the nature of the request, length of time requested, or extent of review necessary.
- h. Temporary Street or Land Closure Application for Social Events, Athletic Events, Block Parties, Lane or Street Closures, etc. Anyone desiring to use a portion of public right-of-way or space that would obstruct the natural flow and/or function of vehicular traffic for a social event, parade, fund raiser, athletic event, block party, lane or street closure, or similar event must apply to the Police Department at least thirty (30) calendar days prior to closure. A Temporary Street or Lane Closure Application can be obtained from and filed with the Police Department.

Except for block parties, there shall be a fee of seventy-five dollars (\$75.00) for the City's costs associated with such Temporary Street or Lane Closure, which shall be in addition to the right-of-way use easement fee in subsection e.2. of this Section. Such application shall provide the following information:

1. Name and address of applicant, sponsors and/or organizers, and/or property owner who will benefit from the closure
2. Limits of street closure requested.
3. Purpose and duration of closure.
4. Estimated number of persons to participate in the event.
5. Names and addresses of adjacent property owners or tenants who may be affected by the closure and any contacts made by applicant.
6. Anticipated damage to street, curbs, sidewalks, etc., as a result of the event.
7. Statement of availability of general liability insurance with City as co-insured.

i. Temporary Street or Land Closure Application for Demolition, Construction or Maintenance. Anyone in the construction or maintenance business desiring to use a portion of public right-of-way or space for demolition, construction, maintenance or related activities must file a Temporary Street or Lane Closure Application with the Police Department in conjunction with a Temporary right-of-way easement. A Temporary Street or Lane Closure Application can be obtained from and filed with the Police Department. There shall be a fee of seventy-five dollars (\$75.00) for the City's costs associated with preparation, which shall be in addition to the right-of-way use easement fee in subsection e.2. of this Section. Such application shall provide the following information:

1. Name and address of applicant and/or property owner; and the construction or maintenance business owner, legal manager, or authorized agent, and the affiliated business.
2. Limits of street closure requested and a detailed specific map of the area that the applicant(s) request be closed.
3. Purpose and duration of closure.
4. Names and addresses of adjacent property owners or tenants who may be affected by the closure and any contacts made by applicant.
5. Alternatives to street closure
6. Anticipated damage to streets, curbs, sidewalks, etc., as a result of the demolition, construction or maintenance project.
7. Statement of availability of general liability insurance with City as co-insured.

j. The Chief of Police, Traffic Engineer, or designee shall approve or deny an application for Temporary or Land Closure under subsection h or i. The Chief of Police, Traffic Engineer, or designee may deny an application if:

- (a) The information contained in the application is found to be false or incomplete in any material aspect; or
- (b) The applicant has conducted an event in violation of this Article or other applicable law; or

- (c) Conduct of the event at the time and place or in a manner proposed will substantially disrupt the safe and orderly movement of traffic contiguous to the event; or
- (d) The event is reasonably likely to interfere adversely with the provisions of adequate police, fire, emergency or other necessary services to other parts of the City; or
- (e) Emergency conditions or other exigent circumstances then existing within the City require that the public streets remain open to the free and unencumbered transportation of emergency crews, equipment and materials.

k. The Police, Fire, Traffic, Transit, Planning and Street Departments shall be notified of any temporary closure approved under Subsection h. or i. via E-mail or other means.

l. Any person aggrieved by the granting or denial of an application for closure by the Police Chief, Traffic Engineer, or designee under Subsection h., i. or j. may appeal the action within ten (10) calendar days from the date of action in accordance with Chapter 1, Article IV.

m. Street Cuts. Street cuts are governed by City Code Section 15-266. (Ord. 0-98-43, 5/27/98) (Ord. 0-2002-38; 9/11/2002) (Ord. 0-2003-8, 3/12/03) (Ord. No. 0-2015-33; 3/25/15)

**PART 2:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I., "Street Rental and Parades", is hereby amended by re-numbering current Section 17-10 as new Section 17-2 and amending it to read as follows:

**Sec. 17-2. Definitions.**

In this Article, the following words and terms have the following meaning:

**Block party** means a neighborhood event occurring in a residential neighborhood that would involve closing a residential street temporarily for the duration of the event. (Ord. No. 0-2015-33; 3/25/15)

**Parade** means an assembly of three (3) or more persons gathering for the common design of moving in or upon any public street from one location to another, whether on foot, on horseback, or by mechanical conveyance, as part of a procession, march, pageant, ceremony, or like event.

**Commercial parade** means a parade sponsored other than by a nonprofit organization, the purpose of which is to advertise a product, whether tangible or intangible, to advertise or promote an exhibition or theatrical performance, or otherwise operate to the pecuniary benefit of the sponsor.

**Parade permit** means a written consent or permit to conduct a parade issued pursuant to written application and approval hereunder.

**Street** means the entire width between the curb and gutter, or edge of pavement, of every road or way publicly maintained when any part thereof is open to the use of the public for vehicular traffic. (Ord. No. 0-2015-33; 3/25/15)

**Permittee** means a person to whom a parade permit has been granted under this Article. (Ord. 0-98-43, 5/127/98)

**PART 3:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I., "Street Rental and Parades", is hereby amended by re-numbering current Section 17-11 as new Section 17-3, with no other changes, to read as follows:

**Sec. 17-3. Parade permit required; exceptions.**

It is unlawful to commence, conduct, aid, or engage in a parade upon any public street without having first secured a City parade permit, except for the following:

1. Funeral processions supervised by a licensed mortuary proceeding by a reasonable route from a funeral home, church, or residence of a deceased to a memorial service or place of interment;

2. Picketing or other peaceful demonstrations at a fixed location that is not a street;

3. Sidewalk processions conducted in accordance with all traffic regulations and other applicable laws;

4. Processions, convoys, marches, or similar activities conducted by members of the United States or Texas armed forces while acting in the regular course and scope of their duties;

5. Processions, convoys, or the like conducted by members of the Tyler Fire or Police Departments while acting in the regular course and scope of their duties.

6. Wedding processions proceeding by a reasonable route by and between the residence of a member of the matrimonial party, the place of performance of the matrimonial service, the place of reception or matrimonial celebration; and

7. Official motorcades escorted by members of the Tyler Police Department. (Ord. 0-98-43, 5/27/98) (Ord. No. 0-2015-33; 3/25/15)

**PART 4:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I., "Street Rental and Parades", is hereby amended by re-numbering current Section 17-12 as new Section 17-4 to read as follows:

**Sec. 17-4. Application for parade permit.**

a. Applications for a parade permit can be obtained from and filed with the Police no less than thirty (30) calendar days prior to the date and time for commencement of such parade. In addition to the parade permit, a Temporary Street or Lane Closure Application must be obtained and filed with the Police Department. There shall be a fee of seventy-five dollars (\$75.00) for the City's costs associated with such Temporary Street or Lane Closure, which shall be in addition to the parade permit fee in subsection c. of this Section.

b. Each application for parade permit shall be signed by the applicant, sworn to before an officer authorized to administer oaths, and contain the following:

1. Name, address, and telephone number of the applicant;

2. Name, address and telephone number of any organization, firm, association, corporation, or other entity on whose behalf application is made;
3. Date and time proposed for commencement of the parade;
4. A statement of the anticipated duration of the parade;
5. A description of the specific parade route listing all streets to be utilized and the direction of flow from the point of commencement to termination;
6. Estimated number of persons to participate in the parade; and
7. Estimated number of vehicles, floats, animals, motorized displays and the like to be utilized in the parade;

- c. The application for a commercial parade permit includes a five hundred dollar (\$500.00), non-refundable fee. The fee for a non-commercial parade permit is fifty dollars (\$50.00).
- d. If the applicant is acting on behalf of a corporation, association, firm, or other organization sponsoring the parade, the application must be accompanied by a copy of an appropriate resolution of the governing body of such corporation, firm, or other organization indicating its sponsorship of such parade and authorizing the applicant to act in its behalf in securing a permit therefor.
- e. Upon receipt of a parade permit application, the Police Chief shall obtain comments from the Fire Chief and Traffic Engineer. (Ord. 0-98-43, 5/27/98) (Ord. No. 0-2015-33; 3/25/15)

**PART 5:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I., "Street Rental and Parades", is hereby amended by re-numbering current Section 17-13 as new Section 17-5 to read as follows:

**Sec. 17-5. Standards for issuance of parade permit; action on application.**

- a. A parade permit shall be issued at least five (5) working days prior to the proposed time for commencement of the parade, if it is determined that the parade will be conducted without substantial danger to the health, welfare, or safety of the public and in conformity with applicable laws and regulations.
- b. The Police Chief or designee may approve an application for parade permit subject to reasonable terms and conditions relating to the time, place or manner for conduct of the parade, including, but not limited to:
  1. The establishment of an alternate time for conduct of the parade;
  2. The establishment of an alternate route for conduct of the parade; or
  3. Reasonable regulations regarding the width and length of the parade.
- c. Copies of the parade permit shall be provided to applicant. The Fire, Street, and Traffic Departments shall be notified of the granting of a parade permit via E-mail or other means. (Ord. 0-98-43, 5/27/98) (Ord 0-2003-8, 3-12-2003) (Ord. No. 0-2015-33; 3/25/15)

**PART 6:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I., "Street Rental and Parades", is hereby amended by re-numbering current Section 17-14 as new Section 17-6 and amending it to read as follows:

## **Sec. 17-6. Standards for denial or revocation of parade permit.**

- a. A parade permit may be denied or revoked if:
  1. The information contained in the application for parade permit is found to be false or incomplete in any material aspect; or
  2. The permittee has conducted or is conducting a parade in violation of this article or other applicable laws; or
  3. The permittee fails to obey any lawful order of the Police Chief, Fire Chief, Fire Marshal, or designees, respecting the conduct of the parade, or any term or condition to which the approval of the parade permit is made subject; or
  4. The parade fails to commence within thirty (30) minutes of the appointed time for commencement; or
  5. Conduct of the parade at the time and place or in the manner proposed will substantially disrupt the safe and orderly movement of traffic contiguous to the parade route; or
  6. The parade will require diversion of so great a number of police officers that the provision of adequate police service to the remainder of the City will be rendered impossible; or
  7. The concentration of persons, animals, and vehicles at points of assembly and disassembly is reasonably likely to interfere with the provisions of adequate fire, police, and other emergency services to other parts of the City; or
  8. Emergency conditions or other exigent circumstances then existing within the City require that the public streets remain open to the free and unencumbered transportation of emergency crews, equipment and materials.
- b. Upon denial of a parade permit the Police Chief or designee shall within five (5) working days prior to the proposed time for commencement of the parade provide written notice of the adverse action to applicant setting forth the specific reasons for denial.
- c. Upon revocation, the Police Chief or designee shall provide such oral or written notice of revocation that is feasible under the circumstances then existing and in addition, shall within five (5) working days thereafter, provide written notice to the permittee setting forth the specific reasons for revocation.
- d. Upon receipt of a notice of denial or revocation, the applicant or permittee shall cease and refrain from commencing, conducting, aiding, or engaging in any parade within the City.
- e. Any person aggrieved by the granting, denial or revocation of a parade permit hereunder may appeal the action within ten (10) calendar days from the date of action in accordance with Chapter 1, Article IV. (Ord. 0-98-43, 5/27/98) (Ord. 0-2003-8, 3-12-2003) (Ord. No. 0-2015-33; 3/25/15)

**PART 7:** That Tyler City Code Chapter 17, "Streets and Traffic", Article I, "Street Rental and Parades", is hereby amended by adding a new Section 17-7 read as follows:

## **Sec. 17-7. Enforcement; penalties.**

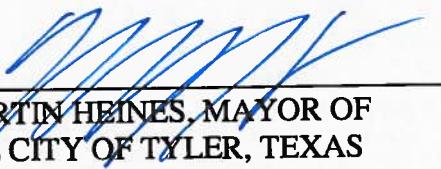
- a. Violation of this Article is unlawful and shall be subject the violator to a penalty as set forth in Section 1-4.
- b. If an application required under this Article is not obtained prior to expiration of the time requirements specified herein, the fee for such permit shall be doubled as a penalty therefor. (Ord. No. 0-2015-33; 3/25/15)

**Sec. 17-8 - 17-29 Reserved.**

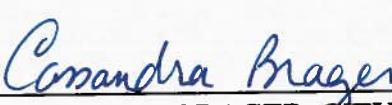
**PART 8:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

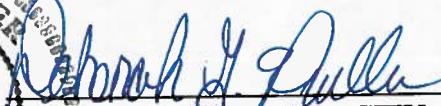
**PART 9:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Friday, March 27, 2015.

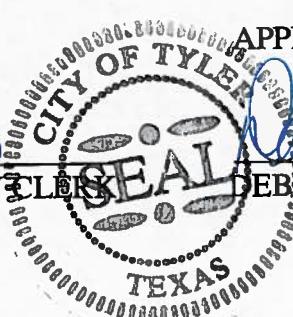
**PASSED AND APPROVED** this 25<sup>th</sup> day of March A.D., 2015.

  
MARTIN HEINES, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK

  
DEBORAH G. PULLUM, CITY ATTORNEY

  
CITY OF TYLER  
SEAL  
TEXAS