

ORDINANCE NUMBER 2011-4

AN ORDINANCE OF THE CITY OF HAMILTON ADOPTING A PARADE, PUBLIC ASSEMBLY, AND PUBLIC DEMONSTRATION ORDINANCE; ADOPTING A PERMITTING PROCEDURE FOR PARADES, PUBLIC ASSEMBLIES AND PUBLIC DEMONSTRATIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council of the City of Hamilton, Alabama, as follows:

WHEREAS, parades, public assemblies, demonstrations, road closings and rallies can interfere with the movement of emergency vehicles and other traffic and thereby endanger public safety; and

WHEREAS, unregulated parades, public assemblies, demonstrations, road closings and rallies have been known to be accompanied by civil unrest and disturbance, accompanied in some cases by significant public injuries and property damage; and

WHEREAS, courts have recognized the right of municipalities to enact reasonable time, place and manner restrictions related to parades, public assemblies, demonstrations, rallies, road closings, and similar activities such as those established hereby, while respecting and protecting in a content-neutral fashion the Free Speech rights of groups and individuals wishing to express their views by such methods; and

WHEREAS, the City of Hamilton, Alabama is empowered to enact ordinances concerning this subject matter and it is reasonable and appropriate for the City of Hamilton, Alabama to enact the regulations hereinafter provided to ensure the delivery of critical emergency services, to protect public safety, maintain the orderly and safe flow of traffic, and ensure the safety of individuals and property while also respecting and ensuring Free Speech rights; and

AND WHEREAS, to properly protect the right of the public to engage in free speech, while balancing the City's need to have reasonable time, place and manner regulations on the same, it is necessary to adopt a Parade, Public Assembly, and Public Demonstration Ordinance.

NOW THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF HAMILTON, ALABAMA HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE.

- a. The Purpose of this ordinance is to establish an application and permitting procedure for every organization, group of persons, or entity which wishes to use public property, sidewalks, or public roads within the municipal limits of the City for an unofficial purpose or purposes in holding a parade, demonstration, rally, road closing or other such activity.
- b. Nothing in this Article shall be construed to limit, restrict, inhibit, reduce, or otherwise impact the right of the City or its Authorities to schedule, authorize, oversee, or otherwise facilitate any parade, public assembly, demonstration, rally, road closing or other such event, if such events violate other laws, ordinances, regulations of the City or the State of Alabama.

SECTION TWO. DEFINITIONS.

- a. Demonstration: a meeting or gathering of an organization,

group of persons, or entity for a public display or for exhibiting feelings or concerns towards a person or a cause.

- b. Public Assembly: a meeting or gathering of an organization, group of persons, or entity to hold a meeting or an address.
- c. Spontaneous Speech: that speech which, because of the immediacy of the concern and the need for swift or immediate action cannot be expected to comply with the permitting process because prompt speech is required and or application is not possible due to the unavailability of City officials or the City application process (i.e. unavailability resulting from business hours, weekends or holidays).
- d. Organization, Group of Persons, or Entity shall mean any collection of persons, greater than twenty in number, who act together or as a unit.
- e. Parade: a procession of an organization, group of persons, or entity.
- f. Rally: the public coming together of an organization, group of persons, or entity for an effort or a cause.
- g. Road Closing: an activity of an organization, group of persons, or entity which requires, even for a brief time, the closure of a public way.
- h. Unofficial Purpose: an unofficial purpose shall be any purposes not commanded or directed by statute, ordinance, or other regulation to be performed by the state, county, city, or other governmental entity.

SECTION THREE. PERMIT REQUIRED

- a. Every organization, group of persons, or entity who wishes to use public property, sidewalks, or public roads within the municipal limits of the City for an unofficial purpose or purposes of holding a parade, public assembly, demonstration, rally, road closing, or other such activity is hereby required to have a permit from the City for the privilege of engaging in any such activity within the City, unless such a permit is prohibited under state law or the activity is otherwise exempted by law, ordinance, or other valid regulation.
- b. During the course of any permitted parade, public assembly, demonstration, rally, road closing, or other such event, there must at all times be some individual, authorized by the permit recipient, who possesses either the permit or a true copy thereof, and has such permit or copy available at the event for inspection on demand by persons authorized to enforce this Ordinance, and has the authority to speak on behalf of and bin the permit recipient.

SECTION FOUR. DUTIES OF THE CITY.

The City shall have, among others, the following duties:

- a. To prepare and provide the necessary forms for the application for a permit and for the submission of any required information as may be necessary to properly administer and enforce the provisions of this article.

- b. To review the application for completeness and collect whatever application fee may be required; to designate or coordinate sites and set time schedules; to coordinate with the appropriate authorities on all matters concerning such activities; and, where appropriate, to receive input from the department of transportation, state highway patrol, the Chief of Police, and the Marion County Sheriff's Office, or any other necessary public officer, for the requested activity.
- c. To forward application material to appropriate public safety entities or individuals for the collective input as to the impact the proposed parade, demonstration, rally, road closing, or other such activity shall have, if any, on the public's health, safety, and welfare. This assessment should include, but not be limited to the impact of the requested activity on the free flow of vehicular traffic, the free flow of pedestrian traffic, and the free movement of emergency vehicles.
- d. To consider, process, and decide whether to issue permits upon applications submitted pursuant to this ordinance within thirty (30) days or less of the acceptance by the City of a completed application.

SECTION FIVE. APPLICATION PROCESS.

- a. Every application for a permit under the provisions of this Ordinance shall submit an application for the permit to the City, which application shall conform to the requirements of this section in addition to any other provisions of this Ordinance.
- b. Unless otherwise provided herein, each application shall be a written statement upon forms provided by the City and submitted within a reasonable time prior to the event, at least thirty (30) days prior to the planned activity for security checks, verifications, and arrangements to be made, as well as for input to be received from affected local and state entities.
 - i. While thirty (30) days is expressed as a minimum requirement for submission of an application under this Ordinance, the city reserves its right to implement content-neutral time, place, and manner restrictions on First Amendment Activities, or to deny an application if insufficient time is available for the City to properly plan or prepare for the event requested in the application, if such inability creates one or more of the situations or conditions described below.
 - ii. While thirty (30) days is expressed as a minimum requirement for submission of an application under this Ordinance, all applicants for whom it is possible to submit an application under this Ordinance prior to an event shall do so, even if the application will be submitted within thirty (30) days of the event at issue. In such circumstances, the City will endeavor with all deliberate speed to process and make a decision on the application prior to the date of the event at issue. Nothing contained herein waives the City's right to implement content-neutral time, place, and manner restrictions on First Amendment Activities, or to deny an application if insufficient time is available for the City to properly plan or prepare for

the event requested in the application, if such inability creates one or more of the situations or conditions described below.

iii. While thirty (30) days is expressed as a minimum requirement for submission of an application under this Ordinance, the City has no intention of suppressing spontaneous free speech activities which, because of their nature and/or need for immediate action, cannot conform to the application process. The foregoing notwithstanding, any spontaneous free speech activities must be preceded by at least twenty-four (24) hours advance notice to the City of Hamilton's Police Department. Nothing contained in this subsection shall be construed to limit, restrict, inhibit, reduce, or otherwise impact the right of the City or its authorities to enforce other local laws and/or the laws of the State of Alabama if such spontaneous speech activities violate said laws.

c. The City shall respond with a decision on the application within thirty (30) days or less, if possible, of the receipt of the completed application, such time being necessary to process the application and obtain needed input from affected local and state agencies as hereinafter described.

d. Each application shall contain the following information:

i. Applicant Information: the following information shall be collected only for the purpose of processing the application, and shall not otherwise be released unless required by law.

A. Name and home address of the applicant, or home office address if a corporation or partnership, and telephone where the applicant may be contacted;

B. Names and home addresses of the partners/members if a partnership or a limited liability company;

C. Names and home addresses of the officers and directors, if a corporation;

D. Identification of all prior parade, public assembly and demonstration permits applied for by the applicant for a parade, public assembly or demonstration within the City.

ii. Event Information

A. Date, time, and place where the proposed activity is to be carried on, including proposed routes of passage of parades or other proceedings;

B. Type and class of activity to be carried on, such as parade, rally, etc.;

C. Information on the number of expected participants, the length of the requested activity, physical description of the materials to be distributed, if any, and how, if at all, participants intend to interact with the general public.

e. Each application shall be signed and sworn to by the applicant, said signature to be by a partner, member, or officer.

Section Six. Procedure for Issuance.

a. Review and recommendation. When this article provides for the review of an application for a permit by the City, a copy of the application shall be forwarded to those persons or entities from whom input is needed to assess the propriety of the requested event.

1. The persons or entities from whom input is requested on any parade or demonstration application may include, but are not necessarily limited to the following:

- i. The Alabama Department of Transportation
- ii. The Alabama State Patrol
- iii. The Marion County Sheriff's Department
- iv. Marion County Emergency Services
- v. Any other public officer or entity whose input would bear on the propriety of issuing the requested permit.

2. Each person or entity from whom input is sought shall make a recommendation thereon, favorable or otherwise, and shall be requested to return the recommendation to the City within fourteen (14) days after receiving a copy of the application.

b. Action by City.

1. The City, via the City Administrator or its designees, shall take action upon the application by either approving or denying the permit no later than thirty (30) days (fewer if possible) after receiving the complete application, such time being necessary to process the application and obtain needed input from affected local and state agencies. If no action is taken by the City within thirty (30) days of the submission of a completed application, the permit is deemed to be granted.

2. Form of Action: The decision of the City shall be reflected on the face of the application itself in a space provided therefore. Any decision adverse of the applicant must be in writing and explain the reasons for denial. If the application is approved by the City, the City shall issue a permit to the applicant no later than thirty (30) days after the submission of a completed application, which permit shall state the nature of the activity authorized and shall bear the date of issuance and the signature of the City Administrator or its designee.

3. Authority to set sites, routes, schedules or cancel.

i. Where more than one permit is sought for the same date or where the proposed route would result in interference with the orderly and free flow of traffic, including pedestrian traffic and emergency vehicles, the City shall have authority to designate reasonable sites and/or routes and set time schedules for the beginning and ending where the activity fails to begin within a reasonable time after the time set for it to begin based on other activities for which permits have been granted or based on the unreasonable interference caused by such delay with the public welfare, peace, safety, health and good order.

ii. Where the parade or demonstration may impact traffic on a State Route, the Alabama Department of

Transportation shall be notified of the potential impact, and input from the Alabama Department of Transportation shall be sought.

iii. Unless specifically stated otherwise in the permit, all demonstrations, rallies, spontaneous speech or other such activities shall take place at a specifically designated spot within the Hamilton Walking Track at the intersection of State Highway 17 and 6th Street SW.

4. Criteria for Approval. Unless one or more of the following situations or circumstances exists, the permit shall be granted:

i. the proposed activity will create some compelling interference with the rights of nonparticipant citizens, such compelling interference to be expressly noted in the denial of the application;

ii. the proposed activity will unreasonably disrupt the orderly flow of traffic, be it vehicular or pedestrian;

iii. the proposed activity would create an endangerment to citizens of the City, such endangerment to be expressly noted in the denial of the application;

iv. the application is incomplete or contains a material falsehood or misrepresentation;

v. the City or one of its Authorities is sponsoring an event, or a permit has been granted to an earlier applicant, for the same time and place, and no reasonable accommodations can be made to provide for both activities which will not trigger one or more of the other reasons for denying a permit;

vi. there is other compelling interference with the public welfare, peace, safety, health, and good order, such compelling interference to be expressly noted in the denial of the application.

c. Restrictions relative to County Courthouse. In no event shall any individual, organization, or group of persons be permitted to bring signs, banners, posters, leaflets, handbills, or any other printed material of any size or shape containing any message intended to influence any judge, juror, witness, or other officer in the discharge of his duty within one thousand (1000) feet of the County Courthouse, unless those materials are to be used in a Court of Law for the purpose of judicial proceedings or functions.

d. Restrictions relative to Funeral Homes or Structures Housing a Funeral or Wake in progress. In no event shall any individual, organization, or group of persons be permitted to bring signs, banners, posters, leaflets, handbills, or any other printed material of any size or shape containing any message within one thousand (1000) feet of a funeral home or structure holding an in progress funeral or wake/viewing.

Section Seven. Financial responsibility and insurance.

a. Nothing in this article shall relieve any person, or persons, or organization from responsibility for any injuries or damages to persons or property, private or

public, occasioned by their acts or omissions arising from the activity for which any permit under this article was issued.

- b. Based upon review of the Application, the City may require that the Applicant be responsible for trash cleanup of affected areas littered during the activity for which a permit is sought, the provision of sufficient parking and storage areas for a large influx of motor vehicles occasioned by the permitted activity, provision of temporary toilet facilities, and other similar special and extraordinary items determined to be necessary for the permitted activity based upon the Application's contents. In no event shall the City require individuals, organizations or groups of persons to provide personnel for normal governmental functions, such as traffic control, police protection, or other expenses associated with the maintenance of public order. If additional requirements are placed on applicants in accordance with this subsection, and those requirements are not met despite assurances by the applicant, then failure to comply with the aforementioned requirements shall be grounds for revocation of the issued permit and/or denial of any subsequent permit requested by the applicant. The City shall be entitled to recover against the applicant the sums expended by the City for those extraordinary expenses agreed to but not provided by the applicant.
- c. Every applicant for a parade, demonstration, rally, road closing, or other such activity, for which primary attendance (that is, attendance primarily for said parade, demonstration, rally, road closing, or other such activity, and not attendance which is the result of another event) is reasonably expected to meet or exceed five thousand (5,000) persons, shall provide the City with a copy of the declarations page of the applicant's liability insurance in place to cover the event set forth in the permit application. For such events the City shall be added as a named insured for the event on the declarations page by the insurance carrier. Minimum policy limits shall be \$1 million per person per incident, \$2 million aggregate for the entire event. All costs for the insurance and adding the city as an additional named insured shall be borne by the applicant. The insurance shall be such as to protect the City from any and all claims of damages to property and/or bodily injury.

Section Eight. Appeals.

- a. Right of appeal. Any applicant whose application for a permit under this article is denied may appeal such denial to the Mayor and City Council, which shall consider such appeal at the next regularly scheduled meeting following the receipt of the applicant's appeal.
- b. Consideration of appeal. The Mayor and City Council shall consider the appeal and require the City Administrator to explain why the permit was denied. Unless the aforementioned explanation shows that the decision on the application was properly made in conformance with this Ordinance, the appeal shall be granted and the permit issued. The applicant shall have a right to be heard during this hearing, and shall have the rights to be represented by counsel. After hearing the appeal the Mayor and City Council shall state the reason for granting or denying the appeal in writing within five (5) days of the appeal

hearing. This requirement shall not be construed to limit the power of the Mayor and Council to announce its decision at the conclusion of the appeal hearing, so long as the writing requirement is subsequently satisfied.

Section Nine. Violations and penalties.

Any person or organization convicted of a violation of the terms of this article shall be guilty of a misdemeanor and punished by a fine not to exceed \$500.00, or by confinement in the jail or correctional institution utilized by the City for a period of time not to exceed thirty days, or both, in the discretion of the Municipal Court Judge.

Section Ten. Defense to prosecution.

It shall not be a defense to any prosecution under this article for failure to obtain a permit before engaging in any activity described in this article that a permit has in fact been issued unless, at trial (1) the accused produces in court a valid permit or a certified copy thereof, and (2) the permit or a true copy thereof was present at the event for inspection.

Section Eleven. Severability.

If any section, provision or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this Ordinance would have been adopted had such invalid portion not been included herein.

Section Twelve. Repeal of Conflicting Ordinances.

All Ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section Thirteen. Effective Date.

This ordinance shall become effective upon adoption and publication.

SO ADOPTED by the City Council of Hamilton, Alabama, this _____ day of _____, 2011.

J. Robert Holliday, Jr.
Mayor for the City of Hamilton

Authenticated:

Jan Williams, Clerk for
the City of Hamilton