

ORDINANCE No. 2023-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA
AMENDING CHAPTER 12.48 OF THE VISALIA MUNICIPAL CODE
RELATING TO SPECIAL EVENTS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

SECTION 1. The City of Visalia has identified the need to amend the existing provisions to the Visalia Municipal Code to update and streamline the procedure used for making administrative determinations regarding the authorization of parades and other types of “special events” that take place in or otherwise encroach upon the City’s public right-of-ways or City owned properties such as parks.

SECTION 2. The following provisions in Chapter 12.48 of the Visalia Municipal Code, consisting of sections 12.48.020, 12.48.030, 12.48.040, 12.48.050, 12.48.060, 12.48.070, 12.48.075, 12.48.080, 12.48.085, 12.48.090, 12.48.100, and 12.48.130 are hereby added and/or amended as follows with deleted language in strikeout text, and new and/or revised wording in italics:

Section 12.48.020 Definitions.

As used in this chapter, the following terms are defined in this section:

"Applicant" shall mean any person, firm, organization, association, or corporation, and their authorized designees, that has submitted an application for authorization to conduct, sponsor, or organize an event governed by this chapter. An applicant must be 18 years of age or older.

"Special Event" shall mean any parade, march, procession, pageant, review, ceremony, festival, assembly or exhibition consisting of persons, animals or vehicles, or a combination thereof which:

1. Is likely to be, planned to be, or actually conducted in, upon, or along, any portion of any city street, sidewalk, alley, or other public right-of-way, or other property owned or controlled by the city;
2. Is likely to, planned to, or actually does obstruct, delay, impede, impair or interfere with the usual, normal and free pedestrian use, vehicular use, or other lawful use of the location; or is likely to, planned to, or actually does not comply with traffic controls or other applicable law; and
3. Provided, however, that a special event shall not include any association of persons which does not present serious traffic, safety, or competing use concerns beyond those presented on a daily basis by ordinary use of the streets and sidewalks, or which does not otherwise implicate significant government interests.

"Downtown Annual Community Event" means any large scale annual outdoor public event utilizing public areas, including streets and parking lots in the vicinity of Downtown Visalia, generally identified as the area north of Mineral King Avenue, east of Conyer Street, south of Murray Avenue and west of Tipton Street, that have historically had in excess of 1000 attendees in one day.

"Expressive Event" shall mean any special event organized or conducted solely or primarily for the purpose of engaging in speech protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution.

"Spontaneous Expressive Events" shall mean any expressive event occasioned by news, affairs, or circumstances coming into public knowledge less than five days prior to the date of such event.

"Application Fee" shall mean the fee to be paid by the applicant for a special event at the time the application is filed ~~with the special events committee, or its authorized designee.~~ A fee schedule shall be authorized or established by resolution of the city council and shall cover the actual full costs (or a portion thereof) of processing special event applications.

"Chief of Police" shall mean the chief of police of the City of Visalia, or his/her authorized designee.

"City Manager" shall mean the city manager of the City of Visalia, or his/her authorized designee.

~~"Special Events Committee" or "Committee" shall mean the committee responsible for authorizing special events pursuant to this chapter, or its authorized designee.~~

Section 12.48.030 General provisions.

A. It is unlawful for any individual, entity, firm, association, or corporation to conduct, aid, or participate in any special event unless it has been approved by the City Manager or their designee ~~committee~~, and said authorizing documents issued by the city are carried by an individual present at the special event and responsible for ensuring compliance with the provisions of this chapter.

B. It is unlawful for any individual, entity, firm, association, or corporation to participate in any special event with the knowledge that the sponsor of the special event has not been authorized by the ~~committee~~ city or that the sponsor has failed to comply with the conditions of the authorizing documents.

C. ~~A special event approved by the committee~~ A Special Event permit authorizes the applicant to conduct only such special event as is described in the authorizing documents, and in accordance with the terms and conditions of said documents. It is unlawful for the applicant to willfully violate the terms and conditions of the authorizing documents, or for any special event participant with knowledge thereof, to willfully violate the terms and conditions of the authorizing documents.

D. Any person willfully violating any provision of this chapter shall be subject to the remedies provided under Chapter 1.13 of the Visalia Municipal Code. In addition to the remedies provided under Chapter 1.13 of the Visalia Municipal code, or as an alternative thereto, such person may also be deemed guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) for each violation. Violations may also be addressed by civil action in which the violator shall be liable for the full amount of actual costs incurred by the city in connection with the provision of any city service for, or because of, the special event, including, but not limited to, police services, fire services, emergency services, park services, traffic safety services, and public works services.

E. ~~The committee~~ Special Event permits shall not ~~be processed~~ any application for a special event until the application fee, as set forth in the ~~fire department's~~ the applicable City of Visalia rates and fees schedule, has been paid in full. However, ~~the committee fee shall be waived~~ the application fee if:

1. The applicant presents a verified statement certifying, under penalty of perjury, that:

a. First Amendment expression is the sole or primary purpose of the special event for which the authorization is sought; and

b. Payment of the application fee would be so burdensome that in the absence of a waiver the applicant would be precluded from exercising its First Amendment rights.

2. The applicant describes the nature of the event in narrative form, including details supporting the conclusion that the special event's sole or primary purpose is First Amendment expression; and

3. The applicant explains why payment of the application fee would preclude the applicant's exercise of First Amendment rights.

4. ~~The committee~~ city finds by a preponderance of the evidence that:

a. All information required by this subsection (E) of this section has been provided; and

b. The statement does not contain any material falsehoods or misrepresentations; and

c. Requiring payment of the application fee would burden the applicant to such an extent that the applicant would likely be precluded from exercising its First Amendment rights.

Section 12.48.040 Applications for non-expressive special events.

A. Unless otherwise specified, the following provisions do not apply to any application for an expressive event.

B. An application for a non-expressive special event shall be submitted at least one month prior to the planned date of the event and no more than one year prior to the planned date of the event, except that applications must be submitted at least two months prior to the planned date of the event if:

1. The event is likely to be, or planned to be, in, upon, or along any portion of any city street, sidewalk, alley, or other public right-of-way; or

2. The event is likely to have, or planned to have, more than one thousand (1,000) persons in attendance.

~~—C. After submitting an application for a non-expressive special event, the applicant shall schedule at least one meeting with the committee, either in person or via telephone, to coordinate with the city on the conduct of the non-expressive special event and to review the requirements for processing the application.~~

~~—D.C. Additional~~ All applications materials required by the city committee for non-expressive special events must be received and the application deemed complete no later than seven business days prior to the planned date of the event, except that applications must be complete no later than fourteen (14) business days prior to the planned date of the event if:

1. The event is likely to be, or planned to be, in, upon, or along any portion of any city street, sidewalk, alley, or other public right-of-way; or

2. The event is likely to have, or planned to have, more than one thousand (1,000) persons in attendance.

~~—E. D.~~ An application is complete if the committee all required documentation and materials have been ~~has received~~ all information required by per Section 12.48.060 (Application contents).

~~F.E.~~ If an applicant for a non-expressive special event fails to comply with the requirements of this section, the ~~committee shall deny the application~~ shall be denied in accordance with the provisions set forth in Section 12.48.090 (Rejection and notice).

Section 12.48.050 Applications for expressive events.

A. An initial application for an expressive event shall be submitted at least five business days prior to the planned date of the event and no more than one year prior to the planned date of the event, except that applications must be submitted at least seven business days prior to the planned date of the event if:

1. The event is likely to be, or planned to be, in, upon, or along any portion of any city street, sidewalk, alley, or other public right-of-way; or

2. The event is likely to have, or planned to have, more than one thousand (1,000) persons in attendance.

~~—B. After submitting an application for an expressive event, the applicant shall schedule at least one meeting with the committee, either in person or via telephone, to coordinate with the city on the conduct of the event and to review the requirements for processing the application.~~

~~—C.B.~~ For an expressive event not requiring a special event encroachment permit as part of the authorizing documents, and not likely to have, or planned to have, more than one thousand (1,000) persons in attendance, a final decision regarding the authorization of said expressive event shall be made within three business days of the city's ~~committee's~~ receipt of a complete application.

~~D.C.~~ For expressive events that require a special event encroachment permit as part of the authorizing documents, or are likely to have, or planned to have, more than one thousand (1,000) persons in attendance, a final decision regarding the authorization of the expressive event shall be made within five business days of the ~~committee's~~ receipt of a complete application.

~~—E. Applicants shall be notified of the committee's decision within one business day after the decision is made.~~

~~F.D.~~ In determining whether to authorize an expressive event, or any terms or conditions imposed thereon, ~~the committee shall not, under any circumstances, consider the message of the event, the content of speech, the identity or associational relationships of the applicant, or make any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of speech or message conveyed by the event shall be considered under any circumstances.~~

Section 12.48.060 Application contents.

A. Except for spontaneous expressive events, any applicant desiring to conduct a special event or an expressive event shall complete and file ~~with the committee~~ all application documentation provided or otherwise available to the applicant from the city. The applicant shall also provide any additional information required ~~by city for the committee~~ to make the findings required by Section 12.48.080. The city shall assist the applicant should such additional information be required.

B. In addition to the information required by subdivision (A), if a special event is likely to be, or planned to be, conducted in, upon, or along, any portion of any city street, sidewalk, alley, or other public right-of-way, the applicant shall also submit the following information:

1. A special event encroachment permit application; and

2. A plan that demonstrates how the applicant intends to comply with the city's good neighbor policy; and

3. A traffic control plan, when required by the city, and, where applicable, a logistics schedule. *A traffic control plan shall be required by the city whenever a proposed special event requires closing a traffic lane in a street or alleyway open to vehicle traffic.*

C. In addition to the information required by subdivision (A), if an expressive event is likely to be, or planned to be, conducted in, upon, or along, any portion of any city street, sidewalk, alley, or other public right-of-way, the applicant shall also submit the information specified in subdivision (B), except such applicants shall not be required to comply with the city's good neighbor policy.

Section 12.48.070 Spontaneous expressive events.

A. An authorization pursuant to this chapter is not required to conduct, aid, or participate in any spontaneous expressive event that complies with the provisions of this section.

B. Prior to the start of the event, the organizer of a spontaneous expressive event shall notify the ~~committee~~ appropriate staff of the event and, to the extent reasonably practicable under the circumstances, respond to all appropriate requests for information.

C. A spontaneous expressive event must not present a substantial safety or traffic hazard and must not unduly impede, obstruct, impair, or interfere with the public's use of the street or other public property, the operation of emergency vehicles, the provision of city services, or any lawful competing use of the location where the event is located.

D. If a spontaneous expressive event presents a substantial safety or traffic hazard, or unduly impedes, obstructs, impairs, or interferes with the public's use of the street or other public property, the operation of emergency vehicles, the provision of city services, or any lawful competing use of the location where the event is located:

1. Unless the spontaneous expressive event's location has special communicative value to the purpose of the event and such value would be lost by moving the event to another location, the event's organizer must make a diligent and good faith effort to relocate the event, and its participants, to another location that does not present a substantial safety or traffic hazard, or unduly impede, obstruct, impair, or interfere with the public's use of the street or other public property, the operation of emergency vehicles, the provision of city services, or any lawful competing use of the location where the event is located.

2. If the spontaneous expressive event cannot be relocated due to the special communicative value of the event's location or the unavailability of another location, then the chief of police shall take appropriate action to the extent reasonably necessary to eliminate the hazard, risk, interference, or impairment;

provided, however, that the chief of police shall not order the area cleared or the cessation of spontaneous expressive activities unless reasonably necessary to avoid imminent danger to person or property.

Section 12.48.075 Downtown Annual Community Events.

A. The City Council finds and declares that it has historically closed City streets in portions of the downtown area for the purpose of assisting certain community and regional events benefitting downtown Visalia, the community at large and non-profit business organizations operating in the City. Control over the operation of these community and regional events has traditionally been turned over to the entity sponsoring the event. The City Council finds and declares that there is a need to provide written guidelines and regulations on how these downtown community and regional events shall operate. In enacting this provision, it is not the intent of the Council to declare all events held in downtown Visalia a declared "Downtown Annual Community Event." Events not declared a "Downtown Annual Community Event" shall be subject to the provisions of this chapter.

B. Downtown Annual Community Events, include, but are not limited to, the following:

1. Breakfast Lions Club Car Show, generally held in May;
2. Lions Club Band Review, generally held in October;
3. Hometown Heroes, generally held in October;
4. Taste of the Arts, generally held in October;
5. Race Against Hunger, generally held on Thanksgiving Day;
6. Candy Cane Lane Parade, generally held the Monday after Thanksgiving.

(a) Any person seeking to have a public event declared a Downtown Annual Community Event shall seek a declaration from the City Council at least ninety (90) days prior to the event. If a street closure is required in connection with the proposed Downtown Annual Event, such request shall be made at the same time.

(b) The City Council may by resolution delegate the authority to declare a Downtown Annual Event, and to temporarily close City streets in connection therewith, to the City Manager and/or their designee.

(c) In addition to being an outdoor public event utilizing public areas in Downtown Visalia, with the stated number of attendees, in order to qualify as this type of event the event must show that it has routinely occurred, which can be proved by showing that the event has been held for at least three of the prior five calendar year before the application is submitted. Any year where an applicant can provide reasonable evidence to City staff that the event was planned but not able to move forward due to weather concerns, or public safety issues can still be accounted for as a year the event was held, if the applicant went through the special event permitting process with the City of Visalia and complied with relevant requirements for meeting good neighbor policies with adjacent businesses.

C. Permit Requirements for Downtown Annual Community Events. Qualifying events shall meet typical requirements for special events except that the good neighbor policy shall not be required since the event has routinely occurred in the same location. In addition, if an event changes location or increases in size by more than twenty-five percent, then staff can determine the Downtown Annual Community Event has significantly changed and can require compliance with the good neighbor policy over the impacted area.

Section 12.48.080 Special event authorization.

A. A special event shall be authorized if, after consideration of the application documentation provided by or requested of the applicant, along with any other relevant information ~~in the committee's possession, the committee finds that~~ the city determines:

1. The conduct of the special event is not likely to substantially interrupt the safe and orderly movement of traffic contiguous to the area or streets where the proposed event is to be held;

2. The conduct of the special event is not likely to require the diversion of so great a number of city police officers to properly police the streets and area being used, as to prevent normal police protection to the city;

3. The concentration of individuals, animals, and vehicles is not likely to unduly interfere with proper fire and police protection of, or ambulance services to the area, or areas contiguous thereto;

4. That the applicant has provided for an adequate number of monitors to control the orderly conduct of such event;

5. The conduct of such special event is not likely to cause injury to individuals or property;

6. If the special event is a parade, that it will likely move from its point of origin to its point of termination expeditiously and without unreasonably stopping in route;

7. The special event is not to be held for the sole purpose of advertising any product, goods, wares, merchandise, ~~or event, and is not designed to be held purely for private profit;~~

8. If the applicant has previously received a special event authorization, that the applicant complied with all provisions of this chapter and with all conditions placed on the authorization, has timely paid all applicable fees, charges, and penalties imposed in relation to the authorization, ~~or has entered into a repayment plan for all unpaid amounts and is current on all payments under such plan.~~

9. The special event complies with the provisions set forth in Section 12.48.100 (Insurance, indemnification, risk mitigation).

10. The special event is not likely to substantially interfere with municipal services, such as fire or solid waste, shall not interfere with ambulance services, access to emergency services, and shall not substantially interfere with educational activities of public schools near the proposed special event location.

B. Terms or conditions placed on a Special Event ~~by the Committee~~ city shall only be included to the extent that:

1. The term or condition is necessary for the ~~Committee~~ city to make the findings required by subdivision (A) above; or

2. The term or condition is necessary to defray municipal expenses reasonably incurred as a direct result of authorizing the special event.

Section 12.48.090 Rejection and notice.

A. If an applicant fails to comply with the requirements specified in Sections 12.48.040, 12.48.050, 12.48.060, and/or 12.48.080 the ~~committee application shall be denied~~ deny the application and ~~notify and~~ the applicant notified in writing of the committee's action.

~~B. If, after receiving a complete application, the committee is unable to make the findings required by Section 12.48.080, the committee shall notify the applicant why, based on the information in the committee's possession, the committee was unable to make the required findings and shall request additional information that could enable the committee to make the required findings.~~

~~C.~~B. Any notice of denial shall state with specificity the reasons for the application's denial and shall identify the provision or provisions of this chapter upon which the denial is based.

~~D.~~C. All notices sent pursuant to this section shall be deposited in the United States post office in the city, postage prepaid, addressed to the applicant at his/her address as provided in the application, or be sent via electronic mail to the address provided in the application.

Section 12.48.100 Insurance, indemnification, risk mitigation.

A special event authorization shall not be made unless:

A. The applicant has obtained adequate insurance, both in type and amount, as determined by the city's risk manager or designee, which determination shall be based upon the logistics, size and other factors associated with the conduct of the special event. The determination made by the city's risk manager or designee shall be reasonably calculated to protect the city from any liability which may be incurred by the city pursuant to its authorization of the special event.

B. The applicant obtains a waiver for insurance coverage, as provided below.

1. The ~~committee shall waive the~~ requirement for insurance coverage *shall be waived* if the applicant presents a verified statement, certifying under penalty of perjury, with sufficient information to establish that:

a. First Amendment expression is the sole or primary purpose of the special event; there will be no fee or donation charged or requested as a condition of admission; the special event will not involve the use of equipment, other than sound equipment; the special event will not involve the sale of alcohol; and

b. The applicant or officer of the sponsoring organization has determined that the cost of obtaining insurance is financially burdensome and would constitute an unreasonable burden on the right of First Amendment expression; and ~~The cost of obtaining insurance is so burdensome that in the absence of a waiver the applicant would be precluded from exercising its First Amendment rights.~~

c. The applicant has been unable to obtain insurance coverage that is within the applicant's budget, including the name and address of at least two insurance agents or other sources contacted to determine insurance premium rates and suitable insurance through the City of Visalia is unavailable to the applicant.

C. ~~2.—The applicant provides a signed indemnification agreement to reimburse the city for any costs that the city incurs in connection with the special event proximately caused by the actions of the applicant, its officers, employees, or agents, or any person who was, under the applicant's control insofar as permitted by law. Applicants that obtain a waiver for insurance coverage will not be required to submit the indemnification form. The agreement shall also provide that the applicant shall hold harmless, indemnify and defend the city, its officials, members, agents and employees against any claims, costs, damages, demands, liability and notices, or any of these, arising or resulting from any damage or injury proximately caused by actions of the applicant in connection with the special event, regardless of whether the city is actively negligent or passively negligent, except for those claims, costs, damages, demands, liability and notices, or any of these, caused solely by the negligence or willful misconduct of the city. Persons who merely join in a parade or event are not considered by that reason alone to be "under the control" of the applicant; and~~

D. ~~3.—~~ The applicant agrees to cooperate with the city to respond to risks, hazards, and dangers to public health and safety that are reasonably foreseeable consequences of the special event.

Section 12.48.130 Deposits Fees for certain special events.

A. Generally.

1. ~~The committee may require the applicant to pay a deposit~~ Fees reasonably calculated by the City using the applicable adopted City of Visalia Rates and Fees for services to reimburse the city for its reasonable and necessary costs in providing services for a special event shall be paid for prior to the issuance of the permit. City staff will provide the applicant with the basis used by the City for determining the applicable required services, which will use the estimated size and scope of the proposed event.

~~2. If the applicant disputes the amount of a deposit fees, he or she may appeal to the city manager or his/her designee within five business days after receipt of the deposit determination.~~

~~B. Cleanup deposits.~~

~~2. —1. The applicant for a special event involving the sale of food or beverages, erection of structures, horses or other large animals, water aid stations, or the use of public streets, sidewalks, or any public right of way shall provide verification that the required amount of refuge containers will be available during the event, cleanup deposit prior to the authorization of a special event. The cleanup deposit shall be in the amount established in the master fee resolution.~~

~~—2. The cleanup deposit shall be returned to the applicant after the special event if the area used for the special event has been cleaned and restored to the same condition as existed prior to the event, or, if no authorization has been made on an application, to the applicant after the planned date of the event as identified in the application has passed.~~

~~3. —3. If the property used for the event has not been properly cleaned or restored, the applicant shall be billed for the actual cost incurred by the city for cleanup and restoration. and the cleanup deposit, or a portion thereof, shall be applied toward payment of the bill. Should there be any unexpended balance on deposit after completion of the work, this balance shall be refunded to the applicant. Should the amount of the bill exceed the cleanup deposit, the difference shall become due and payable to the city upon the applicant's receipt of the bill.~~

~~4. If the applicant disputes the amount of a deposit fees or billed amount for city reimbursement for clean-up expenses, he or she may appeal to the city manager and/or their designee within five business days after receipt of the billed amount.~~

~~BC. Waiver of deposits fees for expressive events.~~

~~1. The City committee shall waive the requirements for staff fees and/or refuge containers a deposit if the applicant presents a verified statement, certifying under penalty of perjury, explaining in sufficient detail for the committee to determine that:~~

~~a. First Amendment expression is the sole or primary purpose of the special event; and~~

~~b. Payment of the deposit fees would be so burdensome that in the absence of a waiver the applicant would be precluded from exercising its First Amendment rights.~~

SECTION 3. In addition to the revisions and additions above to update and streamline the process for special events permits, the Visalia City Council finds that the use of public streets for special events can cause disruptions of traffic patterns, parking issues when usage of street for special events is frequent, particularly when the proposed special event is being conducted by persons that are not associated with the businesses that utilize the street and parking area being used during the special event, and that Visalia City Council would encourage the use of parks or public/private facilities for special events, not public streets, the Visalia City Council is hereby adding section 12.48.085 – Restrictions on the usage of public street for special events to the Visalia Municipal Code:

Section 12.48.085 Restrictions on usage of public streets for special events.
In order to prevent long term disruption of traffic patterns and to encourage the use of parks and/or public or private facilities, and not public streets for special events, for purposes of this ordinance, the city may determine that an event substantially interrupts the safe and orderly movement of vehicular traffic contiguous to the streets where the proposed event is to be held if the applicant is requesting to hold an event, other than a parade, in a street that will impact traffic patterns for more than twelve (12) days in a calendar year or has filed similar event applications impacting the same streets within the previous twelve (12) months. The city may find that no substantial interruption is occurring if the applicant for the special event, or a sponsor of the special event, is a property owner or tenant of property with street frontage in the area proposed for closure, or if the requested closures for special events only impact alleyways.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 5. This Ordinance shall take effect thirty days after its adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted as required by law.