

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Hattiesburg, Mississippi, held on the 16th day of **November, 2021**, the following Ordinance:

ORDINANCE NO. 3299

AN ORDINANCE OF THE CITY OF HATTIESBURG, MISSISSIPPI ESTABLISHING GUIDELINES PERTAINING TO PUBLIC ASSEMBLY

WHEREAS, under *Miss. Code Ann. § 21-17-5 (1)* provides that the governing authorities of every municipality in Mississippi shall have the power to adopt orders, resolutions or ordinances with respect to the municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution or any statute or law of the State of Mississippi; and

WHEREAS, the right to assemble is provided for in the constitution of the United States of America under the First Amendment and states, "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances* ";

WHEREAS, this First Amendment right is the only one that includes in the actual words of the amendment: "the right of the people peaceably to assemble.". This ordinance's intent is to illustrate obligations in certain instances.;

WHEREAS, this ordinance shall be known and may be cited as the "public assembly ordinance of the City of Hattiesburg.";

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Hattiesburg, Mississippi:

SECTION 1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police is the chief of police of the city.

City means the City of Hattiesburg

Public assembly means any march, meeting, demonstration, picket line, rally or gathering for a common purpose as a result of prior planning with an intent of attracting public attention upon the streets, parks or other public grounds (hereinafter together referred to as a "gathering") that interferes with the normal flow or regulation of pedestrian or vehicular traffic.

Public assembly permit is a permit obtained from the chief of police as required by this article.

Parks permit is a permit obtained from the director of the parks and

recreation department as required by this article. This permit type is only required if a person seeks (a) to exclusively rent and exclusively use a stage or a covered structure such as pavilion or building ("qualifying structure"); (b) to exclusively rent and exclusively use special electrical or special events equipment that regular park users cannot use and cannot otherwise access ("qualifying equipment"); (c) to sell merchandise or food; or (d) to charge a fee for entry. Other than this permit, the parks and recreation department may not require any other permit or approval for a gathering or public assembly in a place it operates.

Person is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 2. Permit required.

(1) Persons organizing a gathering may be required to obtain a public assembly permit, a parks permit, neither, or both, as required by this article. The only instance in which both permit types are required is if a gathering (1) requires a public assembly permit, and (2) also independently requires a parks permit--to rent qualifying structures or equipment; sell merchandise or food; or charge an entry fee--in a place operated by the park and recreation department.

(2) If both permits are required, they may be submitted concurrently, and neither permit application may require submission of the other as part of its application.

(3) Even where a public assembly permit or a parks permit is not required for a gathering, all gathering participants are required to comply with all local, state and federal laws, ordinances, and regulations governing public safety or health, including those pertaining to alcohol beverages, firearms, glass containers, skateboards, scooters, roller blades, or dogs.

(4) The public assembly and the parks permitting process shall not incorporate any requirements or conditions that are not enumerated in this chapter, including in permit application forms or agreements.

(5) Public assembly permit. No person shall engage in, participate in, aid, form or start any public assembly, unless a permit shall have been obtained from the chief of police.

(a) The following activities are exempt from having to obtain a public assembly permit from the chief of police--regardless of where they take place:

- i. A gathering of fifty or fewer people (who comply with traffic regulations).
- ii. A gathering of any size that does not interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the sidewalks, streets, parks or other public grounds.
- iii. A Parade--See "Parade Ordinance of the City" regarding obtaining a permit for a parade. (Ord. No. 3211, § 1, 3-7-2017).

(6) Parks permit. No person, in a place operated by the parks and recreation department, may rent a qualifying structure or qualifying equipment as described in this article; sell merchandise or food; or charge

an entry fee--unless a parks permit shall have been obtained from the director of the parks and recreation department.

(a) The following activities are exempt from having to obtain a parks permit:
i. All gatherings and public assemblies that do not include any of the following: (1) exclusive rental of a qualifying structure or qualifying equipment as described in this article; (2) selling merchandise or food; (3) charging a fee for entry.

SECTION 3. Application required.

Non-discretion. The chief of police and the director of the parks and recreation department shall grant all public assembly and parks permits which satisfy permitting requirements and standards for issuance as required under this chapter--regardless of content or viewpoint--and shall use objective, non-discretionary criteria to resolve conflicts due to applications submitted for events that overlap in time and place so much that they cannot both be held as requested.

Public assembly permit. A person seeking the issuance of a public assembly permit shall file an application with the chief of police on forms provided by the chief of police; the form must comport with this chapter and not include terms that infringe on the constitutional rights of requestors.

(1) *Filing period.* An application for a permit for a public assembly shall be filed with the chief of police on forms provided by the chief of police. Applications for a public assembly shall be filed at least 72 hours before the proposed public assembly is proposed to occur.

(2) *Waiver of time limit.* The time limitations prescribed in this section may be waived by the chief of police in those instances where the applicant can show:

a. Because of unusual circumstances, it was impossible to have made application within such time limitations;

b. The nature or conduct of the event would not be dangerous or harmful to the public health, safety and welfare of the residents of the City and the Police Department;

c. The Police Department and other City services and personnel have adequate time to provide for public safety; and

d. The time, route or size of the event will not substantially interrupt the safe and orderly movement of traffic contiguous to the event site or route, or disrupt the use of a street at a time when it is usually subject to significant traffic congestion.

(3) *Application fee.* A fee will be assessed according to a uniform published fee schedule in the amount now or hereafter established by the city and that is a percentage of the amount necessary to defray actual administrative expenses incident to processing.

a. This fee cannot be designed to raise revenue for the city. It shall be paid to the chief of police by the person applying for the permit at the time of the filing of the application, which fee shall be delivered into the general fund of the city.

b. Indigent persons are persons who are unable to pay the established application fee absent undue hardship. Indigent persons shall not be required to pay an application fee greater than \$25.00. Indigency shall be established where an applicant's income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines. If the

applicant's income is greater than that amount, the chief of police, upon request, shall apply uniform, pre-determined, content-neutral, and objective criteria to make an indigency determination.

Parks permit. A person seeking the issuance of a parks permit shall file an application with the director of parks and recreation; the form must comport with this chapter and not include terms that infringe on the constitutional rights of requestors.

(1) *Filing period.* The director of parks and recreation department or his or her designee shall, within 48 hours of receiving the request, notify the applicant as to whether the permit is granted or not.

(2) *Waiver of time limit.* The time limitations prescribed in this section may be waived by the director in those instances where the applicant can show:

a. Because of unusual circumstances, it was impossible to have made application within such time limitations;

b. The nature or conduct of the event would not be dangerous or harmful to the public health, safety and welfare of the residents of the City;

c. City services and personnel have adequate time to provide for public safety; and

d. The time, route or size of the event will not substantially interrupt the safe and orderly movement of traffic contiguous to the event site or route, or disrupt the use of a street at a time when it is usually subject to significant traffic congestion.

(3) *Application fee.* Rental fees according to a uniform published fee schedule shall be paid to the parks and recreation department, and the rental shall be governed by terms and conditions that comply with this chapter.

SECTION 4. Standards for issuance.

Public assembly permit. The chief of police shall issue a public assembly permit as provided for hereunder when, from a consideration of the application, the chief finds that the conduct of such public assembly will not substantially interfere with the movement of fire-fighting equipment enroute to a fire or the movement of other emergency equipment.

Parks permit. The director of the parks and recreation department shall issue a parks permit as provided for hereunder when, from a consideration of the application, the director finds that the qualifying structure or qualifying equipment requested is available for use on the date and at the time requested; the selling of food or merchandise does not violate other laws; fees charged are not solely for private profit.

SECTION 5. Notice of rejection.

Public assembly permit. The chief of police shall act upon each application for a public assembly permit within 48 hours. If the chief of police disapproves the application, notice will be sent by telephone, email, or mail to the applicant, as the applicant indicates.

Parks permit. The same procedure shall apply regarding how the director of the parks and recreation department shall act upon a parks permit application.

SECTION 6. Appeal procedure.

Any person who has been denied a public assembly permit or a parks permit, and who filed an application for the public assembly permit or parks permit in accordance with the filing period, shall have the right to appeal the denial to the city council. The appeal must be filed with the chief of police or the director of the parks and recreation department, depending on the permit type sought, within five business days of receiving the notice of denial. The city council shall consider and act upon the appeal at its next regular meeting.

SECTION 7. Alternative permit.

Public assembly permit. The chief of police, in denying an application for a public assembly permit, shall be empowered to authorize an alternate permit to conduct the public assembly on a date, time, or route different from that named by the applicant. Once offered an alternate permit, the applicant shall have two business days to file a written notice of acceptance with the chief of police. An alternate public assembly permit shall conform to public assembly permit requirements and shall have the effect of a public assembly permit under this article.

Parks permit. The same procedure shall apply to the director of the parks and recreation department and applications for park permits.

SECTION 8. Notice to city and other officials.

Immediately upon the issuance of a public assembly permit, the chief of police shall send a copy thereof to the following:

- (1) The Chief Administrative Officer
- (2) The Director of Public Works
- (3) The Fire Chief.
- (4) The Director of Parks and Recreation

SECTION 9. Contents of permit.

Each public assembly permit and parks permit shall state the following information:

- (1) Date of activity sought to be permitted.
- (2) Starting time and termination time.
- (3) Locations to be used, occupied, or traversed and any qualifying equipment to be rented.
- (4) Approximate number of participants expected.
- (5) Such other information as the chief of police or director of the parks and recreation department shall deem appropriate or find necessary to the enforcement of this article.

SECTION 10. Duties of permittee; possession of permit.

A public assembly or parks permittee hereunder shall comply with all permit directions and conditions and with applicable laws and ordinances.

SECTION 11. Public conduct during permitted activity.

Interference. No person shall unreasonably hamper, obstruct or impede, or interfere with any event granted a permit under this chapter.

SECTION 12. Revocation of permit.

The chief of police shall have the authority to revoke a public assembly

permit issued hereunder upon violation of the standards for issuance as herein set forth.

SECTION 13. Indemnification and insurance.

(a) *Public assembly permit.* No insurance shall be required for a public assembly event, where it is composed of pedestrians only and does not include any vehicles.

(b) *Parks permit.* Certain gatherings or public assemblies--those which (1) require a parks permit pursuant to this chapter (due to qualifying rentals, sales, or entry fees); and (2) have crowd expectations of more than 100--shall be required to provide General Liability Insurance for a minimum of \$500,000.00 with the City of Hattiesburg listed as certificate holder. Insurance coverage shall be provided to the City of Hattiesburg at least ten calendar days prior to the scheduled event.

(c) Both public assembly permits and park permits shall not require provisions:

- i. Requiring persons to indemnify the city for loss caused by the city or by the actions of spectators or third parties.
- ii. Requiring persons to purchase insurance against loss caused by the city or by the actions of spectators or third parties.
- iii. Requiring persons to be legally or financially responsible for the conduct of spectators or third parties.
- iv. Requiring persons to purchase insurance based on the content of a gathering or event.

SECTION 14. Nothing contained herein is intended to be in conflict with the laws of the State of Mississippi, and if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining portions of this Ordinance shall remain in effect.

SECTION 15. This Ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

The above and foregoing Ordinance, after having been first reduced to writing, was introduced by Council Member George, seconded by Council Member Brown, and was adopted by the following, to wit;

YEAS:
George
Delgado
Carroll
Ware
Brown

NAYS:
None

ABSENT:
None

The President thereby declared the motion carried and the Ordinance adopted this the **16th** day of **November, 2021**.

(SEAL)

ATTEST:

CLERK OF COUNCIL

ADOPTED:

COUNCIL PRESIDENT

The above and foregoing Ordinance, having been submitted to and approved by the Mayor, this the **16th** day of **November, 2021**.

ATTEST:

CITY CLERK

APPROVED:

MAYOR