

**ORDINANCE NO. 2020-O-02A**

**AN ORDINANCE AMENDING CHAPTER 5, AMUSEMENTS AND ENTERTAINMENT, ARTICLE III, SPECIAL EVENTS, SECTIONS 5-50 THROUGH SECTION 5-61 OF THE CITY OF CITY OF MARBLE FALLS CODE OF ORDINANCES AND CREATING RESTRICTIONS, CONDITIONS AND PERMITTING REQUIREMENTS; PROVIDING FOR PENALTIES; PROVIDING FOR FINDINGS OF FACT; SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City of Marble Falls is legally empowered to enact and amend ordinances for the protection of the health, safety and welfare of its residents and the public through the legitimate use of its police powers; and

**WHEREAS**, the City Council has determined that there is a need for amendments to those sections of the Code of Ordinances related to special events and

**WHEREAS**, the City Council believes that such amendments to the current regulations will be in the best interest of the City;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS, THAT:**

**SECTION I. PREAMBLE.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Marble Falls and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION II. AMENDMENTS.**

A. Chapter 5, Amusements and Entertainments, Article III, Special Events, is hereby amended by repealing and replacing the language currently contained in Article III with the following sections so that Article III shall read as follows:

Sec. 5-50. Policy, Intent, and Definitions:

- 1) Purpose and Policy: Special events are of infrequent occurrence and temporary nature and may be associated with promotions, holidays, festivals, etc. Special events may be allowed by a special event permit granted by the City Manager or his designated representative.
- 2) Intent: The City recognizes the need to encourage and promote events for the greater good, cultural diversity and promotion of the City. This Article is intended to provide a safe and orderly means for special events to be held within the corporate limit of the City. All regulations of this Article are deemed necessary for the protection of the health, safety and general welfare of the volunteers, members, and their patrons.

- 3) Definitions: The following terms, when used in this Article , shall have the following meanings:
- a) “Athletic Event”, shall mean an occasion in which a group of persons collect to engage in or watch a sport or form of exercise on private or public property not designed for such activity and/or on a city street, sidewalk, alley, or other street right-of-way, which obstructs, delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws or controls. Athletic events include, but are not limited to, bicycle and foot races.
  - b) “Applicant”, Applicant shall include the person, or other entity applying for the special event permit.
  - c) “First Amendment Activity”, means an expressive and associative activity on public right-of-way or public property that is protected by the United States and Texas Constitutions, including speech, press, assembly, and the right to petition, but does not include commercial advertising, revenue-generating activities, fundraising, or a parade as defined herein.
  - d) “Force majeure”, means and includes fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, inclement weather, acts of God, war or terrorism or the potential or actual threat thereof, public safety or public welfare considerations, riots, or local, national, or international emergencies, or other reason of like nature.
  - e) “Parade”, shall mean a march or procession consisting of any number of persons, animals, or vehicles, or a combination thereof, on any city street, sidewalk, alley, or other right-of-way, which obstructs delays or interferes with the normal flow of pedestrian or vehicular traffic, or does not comply with traffic laws and controls.
  - f) “Park”, means all parks and bodies of water contained therein, squares, drives, parkways, boulevards, trails, beaches, playgrounds, playfields, greenbelts, parking lots, community centers and other park, recreation and open space areas and buildings and facilities comprising the parks and recreation system of the City under the management and control of the City of Marble Falls.
  - g) “Permit Application Fee”, shall mean the fee to be paid by the special event permit applicant at the time the application is filed with the City. Such fee shall be set by the City Council.
  - h) “Permittee”, shall mean a person or entity to whom a special event permit is granted.
  - i) “Public Space”, means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles

and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.

j) “Special Event”, means a temporary event, gathering, or organized activity, including but not limited to parades, bike and foot races, block parties, street fairs, concerts, carnivals, festivals or other similar events or attractions that include one or more of the following:

i) Commonly held outdoors; or

ii) Interfere with the normal flow or regulation of pedestrian or vehicular traffic; or

iii) Require special City services, including, but not limited to, street closure(s), provision of barricades, refuse services, stages, special parking arrangements, special electrical services or special safety services; or

iv) Are held on City property.

k) “Street”, means the entire width between the boundary lines of every way publicly maintained, when any part thereof is open to use by the public for the purposes of vehicular traffic.

**Sec. 5-51. Permit Required:**

1) It shall be unlawful for any person to conduct or promote a special event without first having obtained a special event permit from the City.

2) The following are exempt from the provisions in this Article:

a) Funeral or dignitary processions;

b) Groups required by law to be so assembled;

c) Pedestrian processions along a route that is restricted to sidewalks and crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls;

d) An event wholly contained on private property specifically designed or suited for the event and which holds a certificate of occupancy for such including adequate parking; and

e) Activities and events deemed by the City Manager or his designated representative to not require a special event permit.

3) It shall be unlawful for any person in charge of, or responsible for the conduct of, a special event to knowingly fail to comply with any condition of the special event permit.

4) Applicant, in tendering its application and in accepting and receiving a permit, agrees and contracts with the City that it will comply with all of the terms of the permit for the purpose of maintaining and assuring the health, safety and welfare of the residents, visitors and businesses of the City of Marble Falls.

5) The event permit shall be maintained at all times on the premises where the special event is taking place, and shall be made available to any City official upon request.

Sec. 5-52. Application and Issuance of Permit.

1) A person seeking a special event permit shall file an application with the City Manager, or designee, upon forms provided by the City within 90 days and no more than 365 days before the commencement of the proposed event. Each application must be accompanied by a nonrefundable fee as adopted by City Council and described in Appendix C, Master Fee Schedule of the Code of Ordinances. The City Manager or designated representative may consider event applications submitted after filing deadlines where good and compelling cause is shown. A Site Plan shall be included with the application showing the location and activities to take place and including, but not limited to: barricades and road closures, first aid and emergency services stations, vendors, portable restrooms, and trash receptacles.

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

3) The City Manager, or designee shall be responsible for issuing the permit and assuring compliance with the requirements of this Article.

Sec. 5-53. Permit Required.

1) The City Manager or designated representative may require in a special event permit application, among other provisions, reasonable terms or conditions as to the time, place and manner of the event; the implementation of a plan presented by the applicant and approved by the City for crowd control, traffic control, and security; compliance with health and sanitary regulations for the event; coordination with the Fire Department or medical personnel for emergency treatment and evacuation of people who may need immediate care, cardio-pulmonary resuscitation or ambulance service; emergency communication; fire suppression equipment with structures; maintenance of unobstructed emergency passageways; and, where traffic congestion may be anticipated, encouraging the use of public transit and car pooling. In determining conditions, the City Manager or designated representative shall consider anticipated impacts of the event based on an assessment of the event, including size, scope, complexity, and history as well as the event's or event organizer's successful implementation of conditions included in previous permits. Conditions shall be based upon projected impacts on public safety, public places and public services, but shall not be based upon the programming content of the event or message that the proposed event may convey. In order to accommodate other concurrent events, the rights of abutting owners, and the needs of the public to use streets or parks, the conditions may include, but are not limited to, reasonable adjustments in the date, time, route or location of the proposed event; accommodations of pedestrian or vehicular traffic using the street; and limitations on the duration of the event or the operating hours associated with the event.

- 2) Applicant must send notices, and provide documentation of notification, of the event to abutting property owners when in the City Manager's judgment, the special event is of a scope and nature that will impact those owners.
- 3) Applicant must provide copies of any and all additional regulatory approvals to the City prior to the event. The event must comply with all City, State and Federal laws including, but not limited to: adopted building, fire, electrical codes; noise ordinance; proper disposal of animal waste; water usage and disposal of wastewater; trash disposal and signage. Separate permits from the City may be required for any or all of the above matters.
- 4) No permit shall be granted that allows for the erection or placement of any structure, whether permanent or temporary, on a city street, sidewalk, or right-of-way unless advance approval for the erection or placement of the structure is obtained as part of the permit application.
- 5) Rides and/or attractions associated with special events shall conform to the statutory rules and regulations set forth in Chapter 21, Article 21.53 of the Texas Insurance Code, designated the Amusement Ride Safety Inspection and Insurance Act, as amended. Copies of inspection reports will be required. Additional requirements as set out in Article II, Carnivals, are also required.

Sec. 5-54. Denial or Revocation of Permit.

- 1) Denial: A special event permit may be denied based upon a determination of any of the following:
  - a) The proposed event would unreasonably disrupt the orderly or safe circulation of traffic or would present an unreasonable risk of injury or damage to the public, health or safety; or
  - b) The proposed event is proximate to another previously permitted or previously scheduled event, so that the combined impacts and required public services exceed what the City, after reasonable efforts have been made to accommodate both events, can reasonably provide; or the proposed event would interfere with construction or maintenance work in the immediate vicinity, or unreasonably infringe upon the rights of abutting properties; or
  - c) The applicant fails to comply with, or the event will violate, any City ordinance or any other applicable law;
  - d) The applicant makes or allows the making of a false or misleading statement or omission of material fact on an application;
  - e) The applicant has violated this ordinance or the special event permit requirements, or has had an event permit revoked within the preceding twelve (12) months;
  - f) The applicant refuses to agree to, abide by, or to comply with all conditions of the permit and refuses to pay any additional costs as may be required by the City.

- g) Insurance requirements for the special event cannot or have not been met;
  - h) The applicant has, on prior occasions, damaged City property and has not paid in full for such damage.
  - i) The event, would severely hinder the delivery of normal or emergency public services or constitutes a public threat or public nuisance;
- 2) Revocation: The City Manager or designated representative may cancel or revoke a permit already issued upon written notice to the applicant stating the grounds for revocation if any one or more of the following acts or omissions occur:
- a) The applicant, in the information supplied, has made misstatement of a material fact; the applicant has failed to fulfill a term or condition of the permit in a timely manner; or the check submitted by an applicant in payment of the fee for a permit has been dishonored;
  - b) Insurance requirements for the special event have not been met;
  - c) The applicant requests the cancellation of the permit or cancels the event;
  - d) An emergency or supervening occurrence requires the cancellation or termination of the event in order to protect the public health or safety. The City shall refund the permit fee in the event of a revocation caused by an emergency or supervening occurrence; the City shall refund the balance of the fee less its costs incurred if the cancellation occurs at the request of an applicant who is in compliance with this Article;
  - e) If it is determined that any of the provisions of this Article, City ordinance, or state law is being violated or will be violated by the event;
- 3) Prior to denial of a permit, the City Manager, or designee shall consider alternatives provided by the applicant to the time, place, or manner of the special event that will allow the event to occur without posing a threat to health or safety, or otherwise violate state or local law.
- 4) The City Manager or designated representative shall act upon a complete event application within thirty (30) business days after the filing thereof. If the application is not approved, applicant will be notified via mailed letter and/or electronic communication notification, of the reasons for the permit denial. Applicants may appeal a denied permit application to the City Manager within five (5) business days of receipt of the denial notification. Upon such appeal, the City Manager may reverse, affirm, or modify in any regard the determination. The City Manager will respond to applicant with the appeal results within five (5) business days of appeal receipt.
- 5) An applicant that has appealed a permit denial in accordance with subsection (4) may appeal the denial of the permit by the City Manager or designated representative to the City Council. An appeal to the City Council must be received by the City within (5) business days of receipt of the denial notification. The appeal will be considered by the City Council at the next convenient regular council meeting.

6) The City may, in its sole discretion, postpone, cancel, suspend, or close any special event or revoke a special event permit for any force majeure event. The City shall have no liability for such postponement, cancellation, suspension, or closing. Further, the City shall have no liability for failure to postpone, cancel, suspend, or close a special event for a force majeure event or any other reason.

Sec. 5-55. Indemnification.

The applicant, permittee, and/or event sponsor(s) shall defend, indemnify, protect, and hold harmless the City, its officers, directors, employees, agents, successors, contractors, subcontractors, assigns, sponsors, and volunteers from and against any and all liens, claims, demands, loss, liability, cost (including but not limited to attorneys' fees, accountants' fees, engineers' fees, consultants' fees and experts' fees), expense, damage, and causes of action for damages because of injury to persons (including death) and injury or damage to or loss of any property or improvements arising from or caused, in whole or in part, by the acts and/or omissions of the applicant, permittee, event sponsor(s), their officers, directors, agents, employees, contractors, subcontractors, volunteers, and participants in the special event.

Sec. 5-56. Fees/Cost.

1) Fees, other than cost for policing the event, if any, as specified in this Article, shall be established by City Council. In the event the City determines, upon a review of the application, that a special event may require the special attention and involvement of City personnel or facilities, the City shall so notify the applicant. Prior to the issuance of a special event permit, the applicant shall agree in writing to pay the anticipated additional costs to the City incurred as a result of the special event within thirty (30) days of the date upon which the City invoices the applicant for the anticipated costs.

2) When the presence of law enforcement officers and/or private security, emergency medical service (EMS) and the fire department is necessary for special events, the applicant shall be responsible for the cost of providing said personnel, cost will be determined through the application process.

3) The cost or a portion of the cost of providing additional City services may be requested by the applicant and provided as in-kind services by the City upon approval from the City Manager.

Sec. 5-57. Insurance Requirements.

1) The applicant for a special event permit shall furnish the City with proof of commercial general liability insurance in the amount of one million dollars (\$1,000,000) combined single limits per occurrence, and an endorsement naming the City of Marble Falls as an additional insured must be provided.

2) Certificates of Insurance shall be submitted to the City for approval no less than fifteen (15) business days prior to the event. Acceptability of insurance is subject to approval by the City Attorney.

3) The City shall have the right to lower or increase the amount of insurance based upon the type of event, equipment, machinery, location, number of people involved, provision of alcohol, and other pertinent factors or risks associated with the special event.

4) Other insurance: If a special event includes vehicles, aircraft, boats, or other equipment, devices, or activities that are excluded from coverage in the general liability insurance policy, or create a special or increased risk, then separate additional liability insurance coverage for the applicable exclusion(s) must be provided with the same combined single limits of liability for bodily injury and property damage as outlined in the paragraphs above.

Sec. 5-58. Applicant Parking Requirements, Trailers.

1) Applicants shall describe in the site plan that parking and public transportation for the special event has been provided. The number of spaces deemed sufficient, as determined by the City Manager, will be determined by the nature of the event, number of people attending, and event staff during peak times. When adequate parking is not available at or immediately adjacent to the site, off-site parking with attendee transportation plans shall be submitted.

2) The City shall have authority, when reasonably necessary to prohibit or restrict the parking of vehicles along a street, highway, or part thereof adjacent to the site of the special event.

3) Trailers or other vehicles may be temporarily occupied as living quarters at the site of such special events. Such vehicles and trailers shall be parked not less than three hundred (300) feet from any residential district, and shall otherwise comply with all City ordinances and regulations.

Sec. 5-59: Inspections.

1) Inspections may be required to show compliance with City ordinances, the special event permit and public health, safety and welfare. Failure of a permittee to allow an inspection is grounds for revocation of the special event permit or delay to the commencement of the event.

2) Permittee must comply with and remedy or correct any conditions or situations identified by the inspector in a timely manner for the event to proceed as planned.

Sec. 5-60. First Amendment activity.

1) Persons organizing a First Amendment activity that is preplanned, scheduled, and promoted for a future date are required to obtain a special event permit from the City and must file an application at least seven (7) days before the intended event date.

2) First Amendment activities will be exempt from special event application fees and costs associated with policing the event. First Amendment activities are exempt from the insurance requirements set forth in Section 5.57.

Sec. 6-61. Nondiscrimination.

The City shall uniformly consider each application upon its merits and shall not discriminate in granting or denying permits under this Article based upon political, religious, ethnic, race, disability, sexual orientation or gender related grounds.

Sections 6-62 through 6-74 Reserved.

**SECTION III. ENFORCEMENT AND PENALTIES.** Any violation of this Ordinance shall be subject to enforcement through a fine or other penalties as set out in Chapter 1, General Provisions, Section 1-9, General penalties for violation of Code, Marble Falls Code of Ordinances.

**SECTION IV. REPEALER.** All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

**SECTION V. PROVIDING FOR SEVERABILITY.** If any provision, section, sentence, clauses or phrase of this Ordinance or application of same to any persons or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portion of this Ordinance or its application to other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Marble Falls in adopting, and the Mayor in approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provisions or regulation.

**SECTION VI. EFFECTIVE DATE.** This ordinance shall be in full force and effect from its date of approval.

**SECTION VII. PROPER NOTICE AND MEETING.** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code

**ADOPTED AND APPROVED THIS 4TH DAY OF FEBRUARY, 2020.**

**CITY OF MARBLE FALLS:**



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John Packer, Mayor

**ATTEST:**



*Christina McDonald*  
Christina McDonald, City Secretary

**APPROVED TO FORM:**

*Patty L. Akers*  
Patty L. Akers, City Attorney