Parades, Protests, and Public Assemblies -
Recent Developments and Practical Considerations

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Throughout our nation's history, citizens have sought out public places to express their opinions, places such as parks, sidewalks, and streets. Such activities inevitably cause conflict, either because other citizens - or the government - take issue with what those citizens stand for or seek to communicate, or simply because of the conflicts that often occurs with the non speech-related activities for which those public places are principally intended.

Not surprisingly, these conflicts have generated considerable litigation, litigation that has established several legal principles, many of which are long established. But two recent United States Supreme Court decisions have established new principles that now need to be considered. In addition, as highly organized mass protests associated with major national events such as political conventions become more common, the courts have had to wrestle with what is appearing to be an ad hoc case-by-case balancing of demonstrators' First Amendment rights against the potential disruption and danger of large protests.

This paper is intended to provide a relatively high level review of basic constitutional concepts that come into play when local governments regulate pickets, parades, and public protests. Practical issues that should be considered when developing or revising such regulations are also identified.

Public Forum – Time, Place, and Manner – Prior Restraint

The kinds of public properties identified above – parks, sidewalks, and streets – have long been characterized as public forums, a class of public property where the protections of the First Amendment most broadly apply. "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens." *Hague v. CIO*, 307 U.S. 496, 515 (1939).

While some citizens refuse to believe it to be true, even in public forums "government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for the communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Finally, some governmental regulations of speech activity include a permitting requirement. But as stated by the Supreme Court, an

> ordinance requiring a permit and a fee before authorizing pubic speaking, parades, or assemblies in the 'archetype of a traditional public forum,' is a prior restraint on speech. Although there is a 'heavy presumption' against the validity of a prior restraint, the Court has recognized that government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to hold a march, parade, or rally. Such a scheme, however, must meet certain constitutional requirements. It may not delegate overly broad licensing discretion to a government official. Further, any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.

Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992)(internal citations omitted).

These three First Amendment doctrines – forum analysis, time, place, and manner regulation, and prior restraint – serve as the constitutional governor on local government regulation of protests, parades, and public assembly in public places.

Thomas* and *Littleton

Recently two Supreme Court decisions have provided clarity, favorable clarity, for local governments that regulate in these areas. In January 2002, the Court issued a unanimous opinion in *Thomas v. Chicago Park District*, 534 U.S. 316 (2002). *Thomas* considered an ordinance that requires individuals to obtain a permit before groups of fifty or more may "conduct a public assembly, parade, picnic, or other event" in a city park. The ordinance sets forth thirteen specified grounds upon which a permit can be denied, requires the Park District to process applications within 28 days, and requires a written explanation of the grounds for a denial. An applicant whose application is denied has the right to an administrative appeal with subsequent judicial review in State court on certiorari.

Of most significance, the *Thomas* Court held that the prior restraint doctrine was not implicated by the licensing regime because it

> is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum. The Park District's ordinance does not authorize a licensor to pass judgment on the content of speech: None of the grounds for denying a permit has anything to do with what a speaker might say. Indeed, the ordinance (unlike the classic censorship scheme) is not even directed to communicative activity as such, but rather to *all* activity conducted in a public park. The picnicker and soccer player, no less than the political activist or parade marshal, must apply for a permit if the 50-person limit is to be exceeded. And the object of the permit system (as plainly indicated by the permissible

> grounds for permit denial) is not to exclude communication of a particular content, but to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful, or impermissible under the Park District's rules, and to assure financial accountability for damage caused by the event. As the Court of Appeals well put it: "[T]o allow unregulated access to all comers could easily reduce rather than enlarge the park's utility as a forum for speech."

Id. at 322 (internal citations omitted). Thus the regulatory scheme was not subject to the protections of *Freedman v. Maryland*, 380 U.S. 51 (1965), protections that include requirements for: (1) permitting decisions within a specified brief period; (2) the opportunity for prompt judicial review; and (3) the censor to initiate court proceedings while bearing the burden of proof.

Recognizing, however, that even content-neutral time, place, and manner restrictions could be used to stifle free expression, the *Thomas* Court went on to consider the ordinance against the requirement of "adequate standards to guide the official's decision and render it subject to effective judicial review." *Thomas* at 323. Significantly, while most of the permitting standards were extremely objective, one of the standards described by *Thomas* as being "reasonably specific and objective, and do not leave the decision 'to the whim of the administrator'" was whether "the use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, or other users of the park, of the Park District Employees or of the public." In addition, the Court seemed to take solace in the fact that the ordinance is "enforceable on review – first by appeal to the General Superintendent of the Park District, and then by writ of common-law certiorari in the Illinois courts, which provides essentially the same type of review as that provided by the Illinois administrative procedure act." *Id.* at 324 (internal citations omitted).

Then, this past term, the Supreme Court decided *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, __ U.S. __, 124 S.Ct. 2219 (2004). Albeit in the context of an adult business-licensing ordinance, the *Littleton* Court considered a split among the circuits on the question of whether *Freedman's* "prompt judicial review" requirement is one of "prompt access" to the judiciary or "prompt judicial decision". Although the Court held that "prompt judicial review" demands a "prompt judicial decision, the Court found that this standard was satisfied by the State of Colorado's ordinary rules of judicial review. Specifically, the *Littleton* Court noted four things: (1) the ordinary rules and practices that allow courts in "Colorado as elsewhere" to arrange their schedules both at the trial and appellate levels; (2) there is no reason to doubt that judges will exercise these powers with First Amendment concerns about delay in mind; (3) the regulatory scheme did not seek to censor the material and provided "reasonably objective, nondiscretionary criteria unrelated to the content of the expressive materials"; and (4) nothing in *Freedman* requires all of the judicial review safeguards to be set out in the licensing ordinance itself, particularly since municipalities can not impose deadlines on state courts. *Id.* at 2224-25.

Taken together, the upshot of *Thomas* and *Littleton* appears to be: (1) a permit or licensing requirement for use of a public forum is not subject to prior restraint analysis if licensure is required of more than just speech-related activities; and (2) even if subject to the prior restraint doctrine, the prompt judicial review requirement is satisfied by normal court processes and mechanisms; and (3) key in either case is that the decision-making criteria be reasonably specific and objective.

When content-neutral is not content-neutral

Not surprisingly, courts almost invariably strike down regulations of picketing, parades, or protests that differentiate based on content. *See e.g., Carey v. Brown*, 447 U.S. 455 (1980) and *Police Department of Chicago v. Mosley*, 409 U.S. 92 (1972)(stiking down ordinances that distinguished between labor and non-labor picketing).

But surprisingly (at least to the author), one circuit has found, post-*Thomas*, a public demonstration ordinance that defined "public demonstration" as "[a]ny expression of support for, or protest of, any person, issue, political or other cause or action which is manifested by the physical presence of persons, or the display of signs, posters, banners, and the like" to be content based. *Burk v. Augusta-Richmond County*, 365 F.3d 1247 (11th Cir. 2004)(*Burk* sprung out of the much publicized efforts of Martha Burk and the National Council of Women's Organizations to pressure Augusta National Golf Course to admit women members). Apart from the definition, the ordinance established a permit requirement for any demonstration or protest of five or more people on any sidewalk or street in the City of Augusta, Georgia.

Noting that the government had not disputed Burk's assertion that the ordinance targets "political" expression, the court read the ordinance as being content-based. Specifically, the court described what it perceived as a distinction between picketing and protesting and pointed out that the government had not chosen to regulate particular conduct (*i.e.* picketing) but had instead chosen one subject of expression, politics, to regulate. The court also noted that the government had not regulated other non-speech gatherings of five or more people (*e.g.*, street party, tailgating party) that might also threaten the government's feared harms of public safety, traffic, or the public peace.

As a content-based regulation, the court applied strict scrutiny and struck down the ordinance for various reasons, some or all of which would have justified invalidation even under a content-neutral time, place, and manner inquiry (*e.g.*, government's goals could be furthered through less restrictive means such as targeting offensive behavior or manner of speech without regard to viewpoint or subject matter and indemnification and hold harmless "in a form satisfactory" to the government's attorney).

Mass protests that coincide with specific events or target certain places

There has recently been a spate of federal court decisions that consider the problems created by well-organized mass protests or demonstrations that coincide with large national events, target a specific building or facility, or that the organizers insist be at a particular location. It appears that courts are willing to give serious consideration to public safety and other governmental concerns, particularly in this post-9/11 era.

In *Bl(a)ck Tea Society v. City of Boston*, 378 F.3d 8 (1st Cir. 2004), the 1st Circuit considered challenges to the security plan associated with the 2004 Democratic National Convention. Specifically the plaintiffs took issue with a refusal to accommodate its request to modify the designated demonstration zone (DZ). The DZ was established in the context of a "hard zone" where essentially only candidates, delegates, and the press were permitted and a "soft zone" that extended several blocks away from the convention site where pedestrians, but not vehicles, were permitted. The DZ was established on the edge of the hard zone in an attempt to permit demonstrators to have some access to delegates. Noting that security-based time, place, and manner restrictions are not analyzed as prior restraints, the court easily accepted the significant government interest in public safety but did note that the measures allowed for "no opportunity for physical

interaction (such as the distribution of leaflets) and severely curtailed any chance for one-on-one conversation" thereby imposing "a substantial burden on free expression." Cautioning that "[s]ecurity is not a talisman that the government may invoke to justify *any* burden on speech", the court conducted a fact specific analysis and concluded that the security measures, "though extreme, were nonetheless narrowly tailored." Finally the court found that reasonable alternatives existed given that protestors could demonstrate in the soft zone and that at high-profile events such as a national convention, modern communications allow protestors to reach delegates through the press and the internet.

Not to slight the Republicans, a federal district court considered a claim to a permit for a demonstration of 75,000 on the Great Lawn in Central Park on the eve of the Republican National Convention. *National Council of Arab Americans v. City of New York*, __ F.Supp.2d __, 2004 WL 1873037 (S.D.N.Y. 2004). First finding, as in *Thomas*, that the New York park permitting criteria are content neutral, the court readily agreed that "managing and maintaining park facilities constitutes a significant government interest" and that the permit scheme was content neutral, narrowly tailored, and included standards that were reasonably specific and objective. Key to the holding was the court's disposition of the plaintiffs' claim that holding their demonstration at the Great Lawn – the "flagship" where people gather and the "heart and soul" of New York City - was essential to their message. Accepting the government's concern about the damage to the lawn, particularly in the event of rain, the court found that the City had identified reasonable alternative locations for the plaintiffs to hold their event ("[s]imply because Plaintiffs feel that no other location in New York City is worthy of their cause, however, does not make it so.").

A couple of other recent cases that illustrate the fact specific nature of resolving mass gathering disputes are *Utah Animal Rights Coalition v. Salt Lake City Corporation*, 371 F.3d 1248 (10th Cir. 2004)(logistics of coordinated Olympic activities and events with First Amendment rights); and *United for Peace and Justice v. City of New York*, 323 F.3d 175 (2003)(City constitutionally offers alternative option of stationary event in face of short notice demand for parade permit).

Practical considerations in drafting or revising regulations

Who sets the government's agenda?

The City of Charlotte recently revised its picketing and parade ordinances. The reasons for the revisions were two-fold. First, the entire City Code was going through a recodification process and our review led us to conclude that several of the pre-existing provisions were unconstitutional (*e.g.* no more than ten picketers at a single picket, picketers must remain at least 15 feet apart). Second, our police department wanted a whole lot more control over these activities. Specifically, they wanted a permit system for sidewalk pickets and protests. The police were allowed to drive the agenda, at least with respect to the picketing portion of the ordinance, without a thoughtful consideration of the practical and political implications. That got us in trouble.

Run a public and inclusive process

We foolishly thought the proposed changes were relatively innocuous and would be, therefore, non-controversial. We were wrong. Messing with what people perceive to be their First Amendment rights is never non-controversial. By failing to consult with the "stakeholders" (*i.e.* ACLU, NAACP, NOW, anti-abortion groups), we opened ourselves up to a broadside attack at the City Council meeting where the ordinance was first

presented. While many of the stakeholders' claims were unfounded (*e.g.* "if the First Amendment says that Congress shall make no law, who is the Charlotte City Council to make any law?"), some were legitimate. For example, the original draft required two-hour advance notice for any sidewalk picket. It was pointed out at the hearing that, given the broad definition of picketing, such a requirement would apply to a candidate stumping on the street corner – a notion that understandably gave members of the Council heartburn. When it was publicly stated that we had not communicated in any way with the ACLU, the Council was hesitant to move forward.

Co-opt possible opposition

When the City Council deferred the proposal, staff pulled a stakeholders committee together. This accomplished two things. First, the opposition was given a chance to vent their steam in a lower profile forum. Second, legitimate proposals and requests that did not compromise the goal of the ordinance were accepted and incorporated. For example, the proposed four day advance permitting requirement for sidewalk pickets of 25 or more and two hour notice of less than 25 was replaced with a requirement for 48 hour notice for sidewalk pickets of 50 or more after the police were convinced that this would still allow them to plan and deploy appropriate resources. With such compromises, we effectively eliminated opposition from all but a group of anti-abortion protestors whose "legal" complaints were not accepted as credible, largely because their "legal analysis" was so obviously tinged by their religious beliefs.

Use the *Thomas* model

Charlotte consciously chose to model its parade and public assembly provisions (*i.e.* activities that require street closings) after the *Thomas* ordinance. Specifically, the

permit requirements and standards apply to non speech-related street closings (*e.g.* races, street festivals) as well as those that are speech-related. Second, the ordinance closely tracks the decision-making standards of the Park District ordinance. Finally, an administrative appeal mechanism with subsequent judicial review on certiorari is built into the ordinance. Given the *Thomas* Court's favorable consideration of these factors, Charlotte believes it is well positioned to fend off any facial attack on the ordinance.

AN ORDINANCE AMENDING CHAPTER 19 OF THE CHARLOTTE CITY CODE ENTITLED "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES"

WHEREAS, the City of Charlotte has a significant governmental interest in protecting an individual's right to exercise his or her First Amendment right of free speech and the City recognizes that public sidewalks, streets and parks are traditional public forums in which expressive activity occurs; and

WHEREAS, the City of Charlotte has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order while preserving traditional public forums; and

WHEREAS, the City of Charlotte has a significant governmental interest in maintaining the free flow of traffic on public streets and sidewalks, preserving access to public places and buildings and protecting property; and

WHEREAS, the City of Charlotte has a significant governmental interest in protecting residential privacy and protecting unwilling listeners within their homes from the intrusion of unwanted speech; and

WHEREAS, the City of Charlotte may impose reasonable and constitutional regulations for the use of public streets, sidewalks, and parks during a picket, public assembly, or parade to further the above-referenced governmental interests, without regard to the purpose or content of the message but to preserve the public peace and to avoid unreasonable conflicts with other legitimate use of such property.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Chapter 19 of the Charlotte City Code is amended by rewriting Article X to read as follows:

"ARTICLE X. Picketing.

Sec. 19-301. 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:

Picket or picketing, means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

Sidewalk means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights of ways.

Street means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter or right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and street" and their cognates are synonymous as used herein.

Sec. 19-302. Notice of Intent to Picket.

(a) *Notification Required.* The organizer of a picket that the organizer knows, or should reasonably know, that will be by a group of fifty (50) or more individuals shall give notice of intent to picket to the chief of police or designee at least forty-eight (48) hours before the beginning of the picket. The notice of intent to picket shall include the following information:

(i) the name, address and contact telephone number for the organizer of the picket;

(ii) the name, address and contact telephone number of the person giving notice of intent to picket if different from the organizer;

(iii) the name of the organization or group sponsoring the picket;

(iv) the location where the picket is to take place;

(v) the date and time the picket will begin and end; and

(vi) the anticipated number of participants, and the basis on which this estimate is made.

(b) *Receipt of Notification.* Upon notice of intent to picket given in accordance with subsection (a), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a picket shall be responsible for maintaining the receipt, and shall present it when so requested by a law enforcement officer or other city official.

(c) It shall be unlawful for any person to violate any provision of this section.

Sec. 19-303. Picketing Regulations.

(a) Picketing may be conducted on public sidewalks, at the Old City Hall lawn, the Charlotte-Mecklenburg Government Center plaza, Marshall Park, Polk Park, Independence Square Plaza, Arequipa Park, any other City-controlled park, or other city-owned areas normally used or reserved for pedestrian movement, including easements and rights of way, and shall not be conducted on the portion of the public roadway used primarily for vehicular traffic.

(b) Notwithstanding subsection (a), picketing may not be conducted:

(i) at the Old City Hall lawn, the Charlotte-Mecklenburg Government Center plaza, Marshall Park, Polk Park, Independence Square Plaza, Arequipa Park, or other City-controlled park during a festival that has been permitted at that particular property or when that property has been otherwise reserved for private use;

(ii) on a median strip; and

(iii) at a location directed, focused, or targeted at a particular private residence.

(c) Picketing shall not disrupt, block, obstruct or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance, or other access to buildings, which abut the public sidewalks.

(d) Written or printed placards or signs, flags, or banners carried by individuals engaged in picketing shall be of such a size and/or carried on the sidewalks or other city-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed forty inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.

(e) If more than one group of picketers desire to picket at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers arrived first.

(f) Spectators of pickets shall not physically interfere with individuals engaged in picketing. Picketers and spectators of pickets shall not speak fighting words or threats that would tend to provoke a reasonable person to a breach of the peace.

(g) Picketers and picketing shall be subject to all applicable local, state and federal laws including, but not limited to:

(i) the City's noise ordinance;

(ii) the City's handbill ordinance;

(iii) §14-225.1 (obstructing justice);

(iv) §14-277.2 (weapons);

(v) §14-277.4 (health care facilities); and

(vi) §14-288.4 (disorderly conduct).

(h) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with North Carolina General Statute §14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.

(i) It shall be unlawful for any person to violate any provision of this section.

Secs. 19-304 to –310. Reserved."

Section 2. Chapter 19 of the Charlotte City Code is amended by adding a new Article XI to read as follows:

"ARTICLE XI. Public Assemblies and Parades.

Sec. 19-311. 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:

Appeals Official means the city manager, or his designee who shall be a deputy or assistant city manager.

Demonstration means a public display of sentiment for or against a person or cause, including protesting.

Festival means a concert, fair, exhibit, promotion, community event, block party, or similar event.

Parade means an athletic event, march, ceremony, pageant, procession or other similar activity consisting of persons, animals, vehicles or things, or any combination thereof, that disrupts the normal flow of traffic upon any public street. A funeral procession is not a parade.

Permit Official means the person or persons designated by the city manager as being responsible for issuing permits under this article. The city manager may designate different persons as the Permit Official for different categories of permitted events and for different facilities or locations.

Public assembly means:

(a) a festival or demonstration which is reasonably anticipated to obstruct the normal flow of traffic upon any public street and that is collected together in one place; and

(b) a festival on the Old City Hall lawn, the Charlotte-Mecklenburg Government Center plaza, or in Marshall Park, Polk Park, Independence Square Plaza, Arequipa Park or any other City-controlled Park.

Sec. 19-312. Public Assembly and Parade Permits.

(a) *Permit Required.* No public assembly or parade is permitted unless a permit allowing such activity has been obtained pursuant to this section.

(b) *Permit Application.* An application for a public assembly or parade permit shall be made in writing on a form prescribed by the Permit Official at least thirty (30) days before the commencement of the event. Notwithstanding the preceding sentence, the Permit Official shall consider an application that is filed less than thirty (30) days before the commencement of the proposed event where the purpose of such event is a spontaneous response to a current event, or where other good and compelling causes are shown.

The application must contain the following:

(i) the name, address, and telephone number for the person in charge of the proposed event and the name of the organization with which that person is affiliated or on whose behalf the person is applying (collectively "Applicant");

(ii) the name, address, and telephone number for an individual who shall be designated as the responsible planner and on-site manager for the event;

(iii) the date, time, place, and route of the proposed event, including the location and time that the event will begin to assemble and disband, and any requested street closings;

(iv) the anticipated number of persons and vehicles, and the basis on which this estimate is made;

(v) a list of the number and type of animals that will be at the event and all necessary health certificates for such animals;

(vi) such other information, attachments, and submissions that are requested on the application form; and

(vii) payment of a non-refundable application fee established pursuant to Section 2-4 of the Charlotte City Code.

(c) *Permitting Criteria.* An application may be denied for any of the following reasons:

(i) the application is not fully completed and executed;

(ii) the Applicant has not tendered the required application fee or has not tendered other required user fees, indemnification agreements, insurance certificates, or security deposits within times prescribed;

(iii) the application contains a material falsehood or misrepresentation;

(iv) the Applicant is legally incompetent to contract or to sue and be sued;

(v) the Applicant has on prior occasions made material misrepresentations regarding the nature or scope of an event;

(vi) the Applicant has previously permitted a violation or has violated the terms of a public assembly or parade permit issued to or on behalf of the applicant;

(vii) the Applicant has on prior occasions damaged City property and has not paid in full for such damage;

(viii) a fully executed prior application for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple simultaneous events;

(ix) the proposed event would conflict with previously planned programs organized, conducted, or sponsored by the City and previously scheduled at or near the same time and place;

(x) the proposed event would present an unreasonable danger to the public health or safety;

(xi) the proposed event would substantially or unnecessarily interfere with traffic;

(xii) the event would likely interfere with the movement of emergency equipment and police protection in areas contiguous or in the vicinity of the event.

(xiii) there would not, at the time of the event, be sufficient law enforcement and traffic control officers to adequately protect participants and non-participants from traffic related hazards in light of the other demands for police protection at the time of the proposed event;

(xiv) the Applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations concerning the sale or offering for sale of any goods or services;

(xv) the use or activity intended by the Applicant is prohibited by law;

(xvi) for non-First Amendment protected public assemblies or parades, the following criteria shall also apply:

a. the cultural and/or educational significance of the event;

b. the extent to which the event contributes to the economic revitalization and business development of the City;

c. the impact and/or cost of the event to City support services;

d. the impact of the event to the public health, safety and welfare;

e. the impact of the event on business and resident populations within or adjacent to the proposed event site;

f. the evaluation of any previous event produced by the event organizer with regard to planning, quality, public safety, and payment of invoices;

g. the frequency and timing of the event or similar events.

Unless subject to (c)(xvi), noting in this section shall authorize the Permit Official to deny a permit based upon political, social, or religious grounds or reasons, or based upon the content of the views expressed.

The Permit Official may attach reasonable conditions to any permit approval.

(d) *Costs and Fees*. The Applicant shall be responsible for hiring and paying off-duty law enforcement officers, or reimbursing the City for the costs of providing on-

duty law enforcement officers, to appropriately police street closures. For festivals, the Applicant shall be additionally responsible for hiring and paying off-duty law enforcement officers, or reimbursing the City for the costs of providing on-duty law enforcement officers, to provide internal festival security and for hiring and paying necessary emergency medical technicians.

The Permit Official, in consultation with the Charlotte-Mecklenburg Police Department, shall determine the number of officers needed to appropriately police street closures and for internal security, and the number of emergency medical technicians needed, and the time when such services shall commence and end, taking into consideration the following:

(i) the proposed location of the special event or route of the parade;

(ii) the time of day that the public assembly or parade is to take place;

(iii) the date and day of the week proposed;

(iv) the general traffic conditions in the area requested, both vehicular and pedestrian. Special attention is given to the rerouting of the vehicles or pedestrians normally using the requested area;

(v) the number of marked and unmarked intersections along the route requested, together with the traffic control devices present;

(vi) if traffic must be completely rerouted from the area, then the number of marked and unmarked intersections and the traffic control devices are to be taken into consideration;

(vii) the estimated number of participants;

(viii) the estimated number of viewers;

(ix) the nature, composition, format and configuration of the special event or parade;

(x) the anticipated weather conditions;

(xi) the estimated time for the special event or parade;

(xii) for festivals, whether alcohol will be served, live music offered, or retail sales stations provided, and the number and location of alcohol service stands, music stages, and retail stands.

In addition, for festivals located inside I-277, the Applicant shall reimburse the City for the costs of providing street and sidewalk cleaning, trash receptacle placement, trash removal, and trash disposal.

Notwithstanding the foregoing, the City may provide the services required by this subsection at no cost, or at a reduced cost, to the Applicant should the City desire to provide such support to the public assembly or parade. Such action is not a waiver of a regulatory requirement based upon political, social, or religious grounds or reasons, or based upon the content of the views expressed, but instead is an affirmative act of City association or speech.

(e) *Time and Notice of Decision.* The Permit Official shall approve or deny an application within twenty (20) days of receipt. A notice of denial shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal for measures by which the Applicant may cure any defects in the application or otherwise procure a permit. Where an application is denied because the proposed event would conflict with another event that has or will be approved, the Permit Official shall propose an alternative place, if available for the same time, or an alternative time, if available for the same place.

(f) *Appeals.*

(i) An Applicant may appeal the denial of an application in writing within ten (10) days after notice of the denial has been received. Within five (5) business days, or such longer period of time agreed to by the Applicant, the Appeals Official shall hold a *quasi-judicial* hearing on whether to issue the permit or uphold the denial. The applicant shall have the right to present evidence at said hearing. The decision to issue or uphold the denial shall be based solely on the approval criteria set forth in this section. The Appeals Official shall render a decision on the appeal within five (5) business days after the date of the hearing. In the event that the purpose of the proposed event is a spontaneous response to a current event, or where other good and compelling causes are shown, the Appeals Official shall reasonably attempt to conduct the hearing and render a decision on the appeal as expeditiously as is practicable.

(ii) The decision of the Appeals Official is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the Clerk of Superior Court within thirty (30) days after the applicant has received notice of the decision. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five (5) business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five (5) business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the reviewing court that allows for a longer time period, the city shall file its brief within fifteen (15) days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three (3) days to

this time limit, in accordance with North Carolina General Statute 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control. The North Carolina Rules of Appellate Procedure shall govern an appeal by an applicant from the Superior Court of Mecklenburg County.

(g) It shall be unlawful for any person to violate any provision of this section or to violate any term or condition of a permit issued pursuant to this section.

Sec. 19-313. Public Assembly and Parade Regulations.

(a) It shall be unlawful to unreasonably hamper, obstruct, impede, or interfere with a public assembly or parade, or with any person, vehicle, or animal participating or used in the public assembly or parade.

(b) It shall be unlawful for the operator of a motor vehicle to drive between vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.

(c) Spectators of a public assembly or parade and persons attending or participating in a public assembly or parade picketing shall be subject to all applicable local, state and federal laws including, but not limited to G.S. §14-277.2 (weapons).

(d) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with North Carolina General Statute §14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.