REGULATING SPECIAL EVENTS

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SEPTEMBER 24TH VERSION

INTRODUCTION

- What qualifies as a special event?
  - Festivals/Multi-day Events
  - Parades
  - Protests
- Why is this a challenging area to regulate?
  - First Amendment
  - Due Process

FIRST AMENDMENT

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.

CONTENT-NEUTRAL REGULATIONS

- Be justified without reference to the content of the regulated speech
- Be narrowly tailored to serve a significant governmental interest, and
- Leave open ample alternative channels for communication of the information.

SIGNIFICANT GOVERNMENT INTEREST

- These interests are the cornerstone of your regulation.

- Examples include:
  - Traffic control.
  - Management of public spaces and resources.
  - Public health and safety.

NARROWLY TAILORED REGULATIONS & AMPLE ALTERNATIVE CHANNELS OF COMMUNICATION

- Courts require a close fit between ends and means.
- A regulation cannot restrict substantially more speech than is necessary.
- A regulation may not foreclose all channels of communication.

EXAMPLE OF CONTENT-NEUTRAL REGS

- Amplified sound regulations.
- Event hours.
- Type of road closure.
- Required buffer.
- Hours of picketing.

WARNING: CONTENT-NEUTRAL REGULATIONS

- Be wary!
- Can be subject to strict scrutiny if the regulation was:
  - adopted because of an impermissible legislative motive; or
  - justified with a government interest that is related to suppression.

CONTENT-BASED REGULATIONS

- A content-based regulation is presumed invalid.
- Must be able to establish a compelling government interest.

PRIOR RESTRAINT

- A regulation is a prior restraint when the enjoyment of protected expression is contingent upon the approval of government officials.

- Pre-approval can chill and restrict protected expression.

PRIOR RESTRAINT: DISCRETION

- Discretion in decision-making must be limited to avoid liability.

- Decision-making can include:
  - grant or deny permit
  - assess charges to event organizer
  - choose between conflicting requests

EXEMPTIONS AND OVERBREADTH

- Exemptions:
  - Can undermine significant government interests.
  - Can result in a violation of the 1st Amendment by favoring viewpoints or speakers
- Overbreadth: A regulation that is written too broadly
  - Can capture protected speech.
  - Consider language that limits construction of the regulation and restrains the enforcer.

INSURANCE AND INDEMNIFICATION

- There is the potential for a court to find that requiring insurance and indemnification violates the 1st Amendment.
- Depending on the circumstances, these requirements may not be:
  - narrowly tailored or
  - the least restrictive means to protect the city.
- Can be viewed as using a heckler's veto to chill speech.

ENFORCEMENT RISKS

- Viewpoint discrimination.
- Favoring speakers.
- Retaliation for exercising 1st Amendment rights.

DUE PROCESS

No person shall be deprived of life, liberty, or property, without due process of law.

PROCEDURAL DUE PROCESS

- A hearing and a meaningful opportunity to challenge a decision.
- Depending on your regulatory framework, you may need to create an appeal process to satisfy due process requirements.

VAGUENESS

- A law is vague if its prohibitions are not clearly defined.
- A law must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

VAGUENESS

- When a law is vague: it impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

- When a law is vague: it can result in a regulation that operates to inhibit Constitutional rights.

EXAMPLES OF SPECIAL EVENT REGULATIONS

LAS VEGAS, NEVADA

https://www.lasvegasnevada.gov/Business/Permits-Licenses/Special-Event-Permits

- Special Event = 100 + persons AND location is not zoned for or licensed for events AND involves temp structures/power, consumption of alcohol, presence of vendors, or creation of an impact upon any ROW.
- Exceptions = Special events conducted by the City, LV Convention and Visitors Authority, or any other governmental entity.
- Events are tiered based on number of attendees and at least one other attribute.
- Requirements
  - Applications
  - Safety Plans
  - Security Plans
  - Sanitation plans

MADISON, WISCONSIN

https://www.cityofmadison.com/specialevents/

- General Requirements: Applications; Fees; Required Emergency Action Plan
- Park Event: 250 people, promoted to the general public, admission will be charged, vending will occur
  - Purpose is to raise money (non-profits and for-profits)
  - Application deadlines (180 days – new events; 60 days – returning events)
- Rallies, Demonstrations, and Marches: Sidewalks, Streets, Downtown performance spaces.
- Closing Streets:
  - Street Use Staff Commission: Review the application, verify information, answer event organizer questions, determine appropriate conditions for the event and provide necessary assistance to facilitate the operation of the event should the application be approved.
  - Avoids closing State Street because of congestion/disruptive.

AUSTIN, TEXAS

https://www.austintexas.gov/ace

- Austin Center for Events (ACE) = Comprised of city employees from city departments that regulate, permit, or host special events.
- Special Event = 50 or more attendees at a City facility OR impacts a street/public ROW OR is temporary, 50 or more attendees, requires a temporary use or occupancy permit AND includes a temp structure, use of sound equipment, or provision of food/drinks
- Exceptions = Spontaneous events occasioned by recent events or current affairs that is conducted solely on city ROW or parkland.
- Appeal Team = Directors of departments participating in ACE handle appeals.
- Special Event Impact Area = Allows ACE to limit permits within a certain geography.
- Road Closures = Require notice to affected residents who can object. Council action required if there are certain percentage of objections.

ADDITIONAL CONSIDERATIONS

COUNTER-PROTESTS

- Protecting the individuals who attend the protest and those who attend the counter-protest.
- Ensuring overall public safety.

EXTERNAL INFLUENCES

- Residents
  - Role in the permitting process.
  - Impact of special events on nearby residents.
- Event organizers
  - Concerns with “guerilla marketing”.
  - Scofflaw concerns.

QUESTIONS?

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