

City of Houston, Texas, Ordinance No. 2004- 798

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO THE USE OF TRAFFIC CONTROL PERSONNEL; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston, as a home rule municipality, is authorized to regulate traffic upon streets and highways within its jurisdiction; and

WHEREAS, there are many situations in which off-duty peace officers are requested to act as traffic control personnel and direct traffic for various purposes, such as facilitating ingress or egress to or from private streets, garages, or parking lots, or assisting with access and mobility in the vicinity of events or construction sites; and

WHEREAS, the City Council finds that traffic control personnel frequently are off-duty peace officers who are not trained in City traffic control or direction procedures and do not function in a manner that ensures safe, efficient and coordinated traffic direction and management; and

WHEREAS, the City Council finds that the use of off-duty peace officers as traffic control personnel for such purposes may, if not properly implemented and conducted, interfere with traffic control devices or with planned street mobility, and therefore, should be regulated to ensure the safe and efficient movement of traffic upon the streets and highways of the City; and

WHEREAS, in order to maintain a traffic control system that is coordinated and functions in the best interests of the public, the City Council finds that the use of traffic control personnel by private persons and businesses should be regulated to ensure that the personnel function in accordance with City standards and plans for traffic mobility and have the necessary training, equipment and resources to communicate and function efficiently to ensure optimum mobility and public safety on City streets and highways; and

WHEREAS, the City Council desires to establish a permit system to ensure that traffic direction on streets and highways within its jurisdiction by off-duty peace officers hired by private persons is conducted and managed to enhance public mobility and the health, safety, and welfare of the public; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Chapter 45 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XVIII that reads as follows:

"ARTICLE XVIII. CERTAIN TRAFFIC CONTROL DUTIES

DIVISION 1. GENERAL

Sec. 45-451. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section:

Off-duty, with respect to a peace officer, means any time other than while the officer is on-duty, as defined herein.

On-duty, with respect to a peace officer, means while performing functions or activities during work hours assigned by the jurisdiction through which the officer holds his commission and for which the officer receives wages that are paid by that jurisdiction.

Peace officer shall mean a person holding a permanent peace officer license issued under chapter 1701, Texas Occupations Code.

Police chief means the chief of the Houston Police Department.

Traffic control permit means a current and valid permit issued by the police chief pursuant to division 2 of this article to conduct traffic direction.

Traffic direction means any activity by which a peace officer directs vehicular or pedestrian traffic upon a street or upon other property situated in such proximity to a street that the activity affects the flow of vehicular or pedestrian traffic upon a street for the purpose of facilitating ingress or egress to a street in the city from another street, a private street, parking lot, parking garage or other private property. The activity includes, but is not limited to control of traffic by hand signals, whistle or verbal directions, or the assumption of control of the functions of an otherwise automated traffic signal light or control device. The term shall not include the direction of traffic in connection with any construction occurring within or upon a street by personnel employed for that purpose, as authorized by chapter 472, Texas Transportation Code.

Sec. 45-452. Prohibited conduct; defenses.

(a) During the hours between 6:00 a.m. and 7:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, other than a holiday observed by the closure of city offices, it shall be unlawful within the city:

- (1) For any person other than a peace officer to conduct or engage in traffic direction; or
- (2) For any off-duty peace officer to conduct or engage in traffic direction unless a traffic control permit for that activity has been issued pursuant to this article; or
- (3) For any person to hire, employ or otherwise cause, suffer or permit any person to conduct or engage in traffic direction for or on behalf of such person, unless a traffic control permit has been issued pursuant to this article; or
- (4) For any person to conduct or engage in, or hire, employ or otherwise cause, suffer or permit another to conduct or engage in, traffic direction in violation of the terms of a traffic control permit.

(b) It is an affirmative defense to prosecution under this section that:

- (1) The actor is an on-duty peace officer of a jurisdiction other than the city and is conducting or engaging in traffic direction within the legally authorized territory of that jurisdiction;
- (2) The actor is a peace officer of the city or another jurisdiction of this state and conducts or engages in traffic direction in an emergency situation, provided that the actor does not receive any additional compensation for conducting or engaging in the traffic direction; or
- (3) The actor is a school crossing guard acting pursuant to Chapter 541 of the Texas Transportation Code and is conducting or engaging in traffic direction for the protection of children going to or leaving school within a school crossing zone.
- (4) The actor is otherwise expressly authorized by law to conduct or engage in traffic direction.

Sec. 45-453. Rules; forms; fees.

(a) The police chief, in consultation with the director of public works and engineering or his designee, may issue rules and regulations for the operation of this article and shall promulgate application and permit forms, which shall be approved by the city attorney prior to use.

(b) The initial fee for the issuance of a traffic control permit shall be \$100.00. The fee shall be reviewed and approved by the director of finance and administration on an annual basis and adjusted to fully recover the city's costs, taking into account permit issuance and renewal costs, inspection and oversight services that may be required, and equipment and resource utilization, provided that no fee increase in excess of 15% shall be implemented without prior approval of the city council.

(c) The director of public works and engineering or his designee may also establish a fee for traffic engineer reviews required under this article, which fees shall be reviewed and adjusted on an annual basis in the manner established in the preceding subsection.

(d) Applicants must represent that only off-duty peace officers with appropriate training will perform traffic direction under the permit.

Sec. 45-454. Disposition of fees.

All fees generated under this article, except those for traffic engineering reviews, shall be allocated to the police special services fund administered by the police department.

Sec. 45-455. Hearings.

Any person who is aggrieved by the action of the police chief in failing to approve an application or in terminating a traffic control permit under this article shall be entitled to a hearing on the matter. The hearing shall be conducted by a hearing officer designated for that purpose by the police chief and shall be conducted informally but in a manner consistent with principles of due process. The hearing officer's decision on the matter shall be final.

Sec. 45-456-45-460. Reserved.

DIVISION 2. TRAFFIC CONTROL PERMITS

Sec. 45-461. Application for traffic control permit.

Any person who desires a traffic control permit may make application for the permit to the police department upon forms promulgated for that purpose as provided in section 45-453.

Sec. 45-462. Traffic engineering review.

All applications for a traffic control permit shall be reviewed by the traffic engineer. The rules established pursuant to section 45-453 of this Code for the consideration of applications for traffic control permits shall ensure that the provision of traffic direction requested by an applicant is consistent with sound principles of traffic engineering and public mobility. Consistent with those criteria, the traffic engineer may require that certain applications also include the traffic engineer's approval of a traffic engineering study to be provided by the applicant and prepared by a professional engineer acceptable to the traffic engineer.

Sec. 45-463. Action on application.

Following receipt of a complete application and any required fee, the police department shall cause the application to be reviewed for compliance with this article and any applicable rules, including review by the traffic engineer. The police department shall notify the applicant whether the application has been approved or denied. If it is denied, then the grounds for denial shall be articulated in the notice.

Sec. 45-464. Issuance of permit.

(a) Traffic control permits shall be issued on the basis of standard forms that are promulgated under section 45-453 of this Code.

(b) Without limitation of any other requirements, the permit form shall provide that no traffic direction shall be implemented until the permit holder has prepaid the city for all applicable fees.

(c) Traffic control permits shall contain a provision that allows the police chief or his designee to terminate a permit for failure of the permit

holder to comply with any applicable term of the permit upon 10 days' prior written notice.

Sec. 45-465. Services under permit.

(a) Services under traffic control permits shall be limited to traffic direction at the times and places described in the permit. Off-duty peace officers operating under a permit issued under this article shall at all times remain subject to the full supervision and control of the police chief or his designee but shall not function in any manner as employees or agents of the department or the city.

(b) All traffic control permits are subject to the continuing supervision of the police department to ensure public safety and efficient mobility on the streets and highways of the city. The police chief or his designee may suspend all services under a traffic control permit at any time if in the opinion of the police chief such action is required to ensure the safe and efficient movement of traffic on the streets and highways of the city. A determination by the police chief to suspend a traffic control permit shall be final."

Section 3. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 4. That, notwithstanding the effective date set forth below, the Police Chief and other officials responsible for administering this Ordinance shall, on the sixtieth day next following the date of its passage and approval by the Mayor, commence accepting

applications and taking other actions required to implement this Ordinance upon its effective date.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the ninetieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this 28th day of July, 2004.

Bill White

Mayor of the City of Houston

Prepared by Legal Dept.
RDC:asw 07/09/2004
Requested by Honorable Mayor Bill White
L.D. File No. 0420400058001

Don Christian
Senior Assistant City Attorney

AYE	NO	2004-798
✓		MAYOR WHITE
....	COUNCIL MEMBERS
✓		LAWRENCE
✓		GALLOWAY
		ABSENT-OUT OF CITY BUSINESS GOLDBERG
✓		EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
✓		QUAN
✓		SEKULA-GIBBS
		GREEN
	ABSENT	BERRY
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG 03 2004