

## ORDINANCE NO. 1201

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BREA ESTABLISHING PUBLIC ASSEMBLY REGULATIONS AND AMENDING THE BREA CITY CODE

#### THE CITY COUNCIL OF THE CITY OF BREA DOES ORDAIN AS FOLLOWS:

##### A. RECITALS:

(i) Demonstrations, marches, parades, processions, and rallies are regularly conducted on the City's streets, sidewalks, parks, and other public property each year.

(ii) The purpose of this Ordinance is to promote the City's interests in protecting the safety, comfort, and convenience of persons using streets, sidewalks, parks, and other public property; regulating competing uses of public fora; maintaining public property in an attractive and intact condition; preventing unreasonable interferences with residential properties and lawful businesses; and defraying the cost of certain departmental services provided for public assemblies.

(iii) Downtown Brea is a unique, compact pedestrian-friendly area devoted to shopping, entertainment, and dining uses. The City Council finds that the permit requirement threshold for public assemblies in Downtown Brea must be lower than the permit requirement threshold for public assemblies in other areas because public assemblies in Downtown Brea can be unreasonably disruptive with fewer participants than public assemblies in other areas.

##### B. ORDINANCE:

**SECTION 1.** The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

**SECTION 2.** Title 12 (Streets, Sidewalks and Public Property) of Part I (Municipal Code)

of the Brea City Code is amended by adding a new Chapter 12.28 to read as follows:

**“CHAPTER 12.28: PUBLIC ASSEMBLIES**

**Section**

- 12.28.010 Short Title
- 12.28.020 Purpose
- 12.28.030 Definitions
- 12.28.040 Permit Requirement
- 12.28.050 Permit Exemptions
- 12.28.060 Permit Processing
- 12.28.070 Prohibited Items
- 12.28.080 Prohibited Conduct
- 12.28.090 Sound Amplification
- 12.28.100 Indemnity
- 12.28.110 Departmental Service Charges
- 12.28.120 Violations

**§ 12.28.010 Short Title.**

This chapter shall be known and may be cited as the “Public Assembly Ordinance”.

**§ 12.28.020 Purpose.**

The purpose of this chapter is to promote the City’s interests in protecting the safety, comfort, and convenience of persons using streets, sidewalks, parks, and other public property; regulating competing uses of public fora; maintaining public property in an attractive and intact condition; and defraying the cost of certain departmental services provided for public assemblies.

**§ 12.28.030 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY MANAGER.** City Manager or designee thereof.

**DEPARTMENTAL SERVICE CHARGE.** Actual fire safety and traffic control costs incurred by the City in connection with a public assembly for which an assembly permit

is issued.

**DOWNTOWN BREA.** That portion of the City bounded by Imperial Highway on the south, by Brea Boulevard on the east (including properties with frontage on the east side of Brea Boulevard), by Ash Street on the north, and by the terminus of Birch Street and the Gateway Shopping Center on the west. A map depicting the boundaries of the Downtown Brea area is available for public inspection in the office of the City Clerk during normal business hours of the City.

**INDIGENT NATURAL PERSON.** A person who satisfies either of the following criteria:

1. Is receiving benefits pursuant to the Burton-Moscone-Bagley Citizens' Income Security Act for Aged, Blind and Disabled Californians (Welfare and Institutions Code § 12000 et seq.), the California Work Opportunity and Responsibility to Kids Act (Welfare and Institutions Code § 11200 et seq.), the Supplemental Nutritional Assistance Program (7 U.S.C. § 2011 et seq.), or Welfare and Institutions Code § 17000.
2. Whose monthly income is 125% or less of the current monthly poverty line annually established by the Secretary of Health and Human Services.

**PUBLIC ASSEMBLY.** A demonstration, march, parade, procession, or rally that assembles or travels in unison on a street, sidewalk, park, public right-of-way, or other public property owned or controlled by the City and that meets any of the following criteria:

1. Does not comply with applicable traffic laws, regulations, or controls.
2. Takes place on public property in Downtown Brea (including any areas over which an easement for public pedestrian use or access exists) and involves 30 or more participants.

3. Takes place on public property outside of Downtown Brea and involves 75 or more participants.

**SOUND AMPLIFICATION DEVICE.** Any bullhorn, megaphone, speaker, or similar device used to amplify the volume of a voice or a sound.

**§ 12.28.040 Permit Requirement.**

No person shall conduct or participate in a public assembly unless an assembly permit has been issued for such activity.

**§ 12.28.050 Permit Exemptions.**

An assembly permit shall not be required for any of the following:

A. Public assemblies that are conducted at the City Hall plaza and are occasioned by news or affairs coming into public knowledge less than three days prior to such public assembly.

B. Public assemblies in a City facility that has been rented from the City.

C. Activities conducted pursuant to a film permit issued under Chapter 5.224 of this Code.

D. Activities conducted by a governmental agency acting within the scope of its authority.

E. Funeral processions conducted by a mortuary or funeral home.

**§ 12.28.060 Permit Processing.**

A. Application Deadline. Assembly permit applications shall be filed with the City Manager not less than four days prior to the date of the proposed public assembly.

B. Application Contents. Assembly permit applications shall be filed on a City-provided form and shall contain the following information as applicable:

1. Name and contact information for the person who is organizing the public assembly and will be responsible for its conduct.
2. Name and contact information for the organization on whose behalf the public assembly is proposed to be conducted.
3. Date, time, and location of the public assembly including any staging area, disbanding area, and travel route.
4. An estimate of the number of persons who will be participating in the public assembly.
5. An estimate of the length of the public assembly in miles.
6. An estimate of the number persons who will be observing the public assembly.
7. The type of security or other arrangements that will be provided to assure that participants are properly directed.
8. The minimum and maximum speeds that the public assembly is to travel.
9. The maximum number of march, parade, or procession units in the public assembly and the maximum and minimum interval of space to be maintained between the units.
10. The number and type of vehicles in the public assembly.
11. Written permission from the owner of any private property that will be used as a staging area or a disbanding area.

C. Application Fee. Any person seeking an assembly permit shall pay a non-refundable application fee concurrently with the filing of the application. The assembly

permit application fee amount shall be as set by City Council resolution.

D. Indigency Waivers. An indigent natural person shall be exempt from payment of the assembly permit application fee upon obtaining an indigency waiver. An organization in which a majority of its members are indigent natural persons also shall be exempt from payment of the assembly permit application fee upon obtaining an indigency waiver. A request for an indigency waiver shall be made at the time of permit application and shall be accompanied by such relevant information and documentation as may be necessary for verification of eligibility. The City Manager shall grant an indigency waiver upon verification of eligibility.

E. Permit Approval or Denial. The City Manager shall approve an assembly permit application unless one or more of the denial findings specified in Paragraph F below is made in a written notice to the applicant. The City Manager shall consider each application upon its merits, shall not discriminate in granting or denying applications, and shall not deny a permit based upon a subject matter or viewpoint involved in a proposed public assembly.

F. Denial Findings. An assembly permit application shall only be denied on the basis of one or more of the following criteria:

1. The application is incomplete.
2. The application contains false or intentionally misleading information.
3. The applicant, or the organization on whose behalf the public assembly is proposed to be conducted, has an unpaid departmental service charge debt to the City for a prior public assembly.

4. The public assembly is proposed for a time and location for which another activity has been previously authorized.

5. The public assembly will require the simultaneous closure of the roadway portion of more than two streets that run in a parallel direction between the hours of seven a.m. and eight p.m. Monday through Friday, or between the hours of ten a.m. and six p.m. on Saturday, unless the activity will occur on a national holiday.

6. The public assembly will require closure of the roadway portion of any street in a commercial zone for more than three hours in any one day between the hours of seven a.m. and eight p.m. Monday through Friday, unless the activity will occur on a national holiday.

7. The route or location of the public assembly traverses a street or other public right of way that was scheduled for maintenance, construction, or repair prior to the submission of the permit application and the conduct of the public assembly would interfere with such maintenance, construction, or repair or would create a threat to the health or safety of the public assembly's participants.

8. The staging area or disbanding area cannot physically accommodate the number of participants expected by the applicant.

9. The public assembly would result in a violation of any federal, state, or local law.

G. Permit Conditions. The City Manager may condition an approved permit with reasonable requirements concerning the time, place, or manner of holding the public assembly as is necessary to coordinate multiple uses of public property, to assure preservation of public property, to prevent dangerous, unlawful, or impermissible uses,

to protect the safety of persons and property, and to control vehicular and pedestrian traffic in and around the venue.

**§ 12.28.070 Prohibited Items.**

A. Prohibitions. No person shall carry or possess any of the following items while present at a public assembly:

1. Lumber, wood, or wood lath greater than one foot in length.
2. Plastic pipe or metal greater than one foot in length or greater than one-quarter inch in its thickest dimension.
3. A sign, poster, plaque, or notice that is not constructed solely of a cloth, paper, or cardboard material less than one-quarter inch in thickness.
4. A projectile launcher or similar device used to hurl an object, liquid, or other substance.
5. A gas mask or similar device used to filter air breathed and that would protect the respiratory tract and face against irritating, noxious, or poisonous gases.

B. Exceptions. Paragraph A does not apply to the following:

1. Any person carrying or possessing a piece of wood that satisfies all of the following criteria:
  - a. Is blunted at its ends.
  - b. Is two inches or less in width.
  - c. Is one-fourth inch or less in thickness or, if not generally rectangular in shape, is three-fourths inch or less in its thickest dimension.
2. Any disabled person carrying or possessing a cane, walker, or



similar item necessary for such person's mobility.

**§ 12.28.080 Prohibited Conduct.**

No person shall engage in any of the following conduct while present at a public assembly:

A. Violate any permit condition contained in the assembly permit issued for the public assembly.

B. Fail to abide by instructions given by a traffic control officer or law enforcement officer for the purpose of accommodating emergency vehicles or traffic through a public assembly route.

C. Give traffic control instructions to non-participants of the public assembly.

D. Ignite or burn any open flame device (including a candle, portable or stationary torch, road flare or fuse, fuel fired lantern, signal flare or sky lantern), bonfire, recreational fire, cooking fire, warming fire, sign, or effigy.

**§ 12.28.090 Sound Amplification.**

A. Time Restriction. No person at a public assembly shall utilize a sound amplification device between the hours of 10:00 p.m. and 9:00 a.m.

B. Manner Restrictions. No person at a public assembly shall utilize a sound amplification device that does any of the following:

1. Produces loud or raucous noises which interferes with the conduct of any business in the vicinity of the assembly.

2. Disturbs the peace, quiet, and comfort of persons in the vicinity of the assembly.

3. Is audible at a distance of 250 feet from the point from which the

broadcast emanates.

**§ 12.28.100 Indemnity.**

A. Requirement. An assembly permit shall not be effective until the permittee has submitted to the City Manager an executed indemnification agreement approved as to form by the City Attorney.

B. Scope. The indemnification agreement shall require the permittee to defend, indemnify, and hold the City and the City's officers' employees, and agents harmless from and against claims, damages, expenses, loss or liability arising out of or resulting from the alleged acts or omissions of the permittee or the permittee's officers, employees, or agents in connection with the permittee's public assembly. The indemnification agreement shall not make the permittee responsible for losses to the City arising from audience reaction to the permittee's public assembly; shall not make the permittee responsible for activities at the permittee's public assembly that are outside of the permittee's control; and shall not require the permittee to waive any cause of action the permittee might otherwise have against the City.

C. Exception. An indemnification agreement shall not be required if the permittee cooperates with the City Manager to design the public assembly to respond to specific risks, hazards, and dangers to the public health and safety identified by the City Manager as being reasonably foreseeable consequences of the public assembly.

**§ 12.28.110 Departmental Service Charges.**

A. Reimbursement Requirement. A permittee shall reimburse the City for departmental service charges incurred in connection with or due to the permittee's public assembly. No permittee is required to pay for the cost of law enforcement personnel to

provide for the protection of a public assembly and its attendees from hostile members of the public or from counter-demonstrators, or to pay for the cost of general law enforcement in the vicinity of the event.

B. Invoice. No later than 30 business days after the expiration of an assembly permit, the City Manager shall issue the permittee an itemized invoice of departmental service charges incurred in connection with or due to the permittee's public assembly.

C. Payment Deadline. No later than 30 business days after issuance of the invoice, a permittee shall remit to the City Manager payment for the departmental service charges specified in such invoice.

D. Exception. This Section shall not apply to any person who has been exempted from payment of the assembly permit application fee by receipt of an indigency waiver.

**§ 12.28.120 Violations.**

Any person who intentionally violates any provision of this Chapter shall be guilty of a misdemeanor."

**SECTION 3.** The City Council finds that it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment because it establishes content-neutral time, place, and manner regulations for public assemblies on City property. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

**SECTION 4.** The City Council declares that, should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the

remaining provisions, sections, paragraphs, sentences, and words of this Ordinance shall remain in full force and effect.

**SECTION 5.** The City Clerk shall certify to the adoption of this Ordinance.

**APPROVED AND ADOPTED** this 19<sup>th</sup> day of December, 2017.

\_\_\_\_\_  
Glenn Parker, Mayor

ATTEST: \_\_\_\_\_  
Lillian Harris-Neal, City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brea held on the 5<sup>th</sup> day of December 2017, and was finally passed at a regular meeting of the City Council of the City of Brea held on the 19<sup>th</sup> day of December, 2017 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

DATED: December 19, 2017

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Lillian Harris-Neal, City Clerk

December 19, 2017  
**ORD. 1201**