



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 17, 2004

ITEM NUMBER: Item Number

SUBJECT: Ordinance Amending Special Event Permit Regulations

DATE: May 5, 2004

FROM: City Attorney's Office

PRESENTATION BY: Marianne Milligan, Sr. Deputy City Attorney

FOR FURTHER INFORMATION CONTACT: Marianne Milligan 714.754.5289

RECOMMENDATION:

1. Approve the first reading of the proposed ordinance regarding special event permits and block parties. This ordinance replaces the City's existing procedures for special event permits and adds a new article regulating block parties.
2. Adopt the resolution incorporating the City's special event fees with the City's annual fee resolution.
3. Adopt the resolution establishing pre-designated event routes for special events requiring street closures.

BACKGROUND:

During the processing of the application for the 2002 Orange County Dyke March in July and August 2002, the City Attorney's Office determined the City's Municipal Code provisions regulating special event permits needed updating. These permits can involve activities that have "free speech" protections under the First Amendment of the U.S. Constitution and California's Constitution. There are constantly new cases across the Nation that affect the constitutional law that governs such regulations.

As a result, the City Attorney's Office began the process of gathering necessary research documents with which to revise the City's Code provisions for special event permits.

In 2002 City staff successfully worked with the march organizers to reach agreement on the conditions attached to the 2002 permit and continued their efforts towards updating the special events ordinance. The work on updating the special events ordinance was not yet completed when organizers applied for a permit to hold their 2003 march. City staff again worked with organizers to avoid enforcing any part of the special events ordinance in need

of updating. Consequently the 2003 Dyke March took place as scheduled. The City expects the proposed revisions will eliminate provisions that have been outdated by recent law.

ANALYSIS:

The proposed ordinance, based on the most recent relevant cases, is now “content neutral” which means that a special event permit is not issued based on the type of speech that may be involved with the event and the ordinance no longer leaves decisions regarding issuance of permit and/or conditions in the sole discretion of the City Manager.

The proposed ordinance is attached hereto as Attachment 1. A copy of the City’s current special event ordinance is also attached hereto as Attachment 2 for your reference.

PROPOSED CHANGES:

The following are highlights of the changes in the proposed ordinance:

- The procedure for applying for a special event permit remains the same:
 - The application is submitted with an application fee;
 - The application is then routed to all departments that may be affected by the event;
 - Each affected Department reviews the application and provides suggested conditions to be imposed to mitigate any adverse effects of the event and an estimated cost for City services.
- By drafting the ordinance to be content neutral, special events taking place on property owned by churches and other nonprofit organizations that previously did not require special event permits may no longer be exempt from permit requirements if the events include the use of amplified sound, fireworks, animals or amusement rides, or the construction of temporary or permanent structures that would require fire or building permits.
- The ordinance now contains provisions wherein an “indigent natural person” may obtain a waiver of the application fee, departmental service fees and insurance requirements.
- Events on private property no longer require a special event permit if the event does not require City services, does not use amplified sound, fireworks, animals or amusement rides and does not involve construction of temporary or permanent structures that would require fire or building permits.
- Block parties are governed by separate regulations and are no longer considered “special events.” There are no substantive changes in how block parties are processed. Please note that block parties do require the consent of all affected residents (owners and lessees) on the block.
- No permit is required for events that take place on public sidewalks or other public rights of way if the participants do not impede traffic and obey all traffic and pedestrian laws.

- The proposed ordinance requires that the review of a special events application be completed within 13 days of its being filed, and requires specific findings if an application is denied. If an applicant wants to ensure his/her ability to appeal the city manager's decision to the city council, the application must be submitted at least 60 days prior to the special event. See explanation below.
- There is also a provision for "expedited review" for those applications that can only be submitted with fewer than 15 working days before a proposed event if the event is precipitated by "news, circumstances or events coming into public knowledge fewer than fifteen (15) working days before the proposed event".
- The ordinance contains a specific description of departmental service fees that will allow the City to recover employee costs set by resolution. Previously the fees for city services for special events were established by Administrative Regulation 2.13. In conjunction with the enactment of an amended special event ordinance, it has been determined that the Administrative Regulation should be repealed and the departmental fee schedule for special events be included with the Annual Fee Resolution for ease of reference. The fees for the departmental service fees have not changed. The resolution consolidating the special event departmental service fees with the City's Annual Fee Resolution is attached hereto as Attachment 3.
- Establishment of pre-designated event routes for those events that require full or partial street closures are set by resolution. The resolution for the proposed pre-designated event routes is attached hereto as Attachment 4. The resolution establishes routes for all general areas of the City where events have taken place in the past. Notice that only an approximate ½ block of Harbor Boulevard is part of a designated event route. Traffic patterns and changes over the last several years in the use of Harbor Boulevard have made it a major regional arterial street not suitable as a venue for events that require a full street closure. Because Harbor Boulevard is a major regional arterial street, an event on Harbor Boulevard would cause a substantial interruption to public transportation and other vehicular and pedestrian traffic, would require the City to divert City services so as to unreasonably reduce adequate levels of service or municipal functions to other areas of the City, and would unreasonably interfere with the movement of public safety or emergency vehicles on the streets.
- The proposed ordinance contains a specific provision making it unlawful to interfere with a special event.

EXPLANATION OF APPLICATION SUBMISSION TIMES:

As indicated above the proposed ordinance would now require that an application be submitted at least 15 days prior to a proposed special event and if an applicant wants to ensure his/her ability to appeal the city manager's decision to the city council, the application must be submitted at least 60 days prior to the special event. The reasons for requiring both the 15 and 60 day time period are as follows:

15 DAY APPLICATION PERIOD

Day 1 – application is submitted. Because an application may be submitted after noon or late in the day (e.g. 4:45 pm) the first day may or may not be available to do anything but accept the application.

Day 2 – application receives initial review by Chief of Code Enforcement (“CCE”), cover memo is prepared and memo with copy of the application is distributed to all affected departments.

Days 3-7 – application reviewed by affected departments and returned to CCE.

Days 8-9 – CCE reviews input from departments and prepares permit with conditions.

Days 10-13 – Extra time needed for unforeseen circumstances or delays. For example:

- When an application is distributed to departments, employees have varied schedules and may not be at work on the day(s) the distribution memo is received in their department further reducing the time actually allowed for departmental review.
- If traffic control is required, additional lead time is necessary to schedule the necessary number of officers required for that particular event.
- If any clarification is needed or the reviewing employee has additional questions of the applicant regarding an item or information contained in the application, it may take a day or two to actually reach the applicant to obtain the needed clarification or to work with the applicant to reach appropriate conditions for the event.

Day 13 – Permit mailed to applicant and allows 2 days for applicant to file legal action to contest denial or imposition of conditions.

60 DAY FILING PERIOD FOR COUNCIL APPEAL

Assuming a 15 day filing period for a regular application, if an applicant wants to ensure an appeal to the city council staff would need the following additional time:

Days 16-22 – deadline for filing an appeal. Per Municipal Code Sec. 2-305 an applicant has 7 days from the date of the final decision (here, staff’s decision on the application) Applicant could wait until day 22 at 5:00 pm to file.

Days 23-60 – Municipal Code Section 2-303 requires the appeal to be held “at the first regular meeting which follows receipt of the application by ten (10) or more days”. However, Administrative Regulation 1.8 requires all staff reports must be filed in the city clerk’s office no later than 2 pm the Thursday 12 calendar days preceding the council meeting for which it is agendized.

Example 1: If an appeal is filed on 4/5/04 which was the first Council Monday in April, the appeal could not be agendized until the first meeting in May because council agenda reports for the 2nd meeting in April would be due on 4/8/04 which would give staff only 2 full working days to prepare a agenda report. Agenda reports for the 5/3/04 meeting are due on 4/22/04 which would give staff time to prepare their agenda reports

and allow for at least the 10 days as established by the municipal code. This is approximately 4 weeks from the date of filing of the appeal.

Example 2: Permit is issued 4/9/04. Time for appeal ends 4/16/04. Agenda reports for the 5/3/04 meeting are due 4/22/04 which would only give staff 3 full days to prepare reports (assuming no other work load). Therefore, the soonest it could be agendized would be for the 2nd meeting in May, 5/17/04. This is approximately 5 weeks from the date of filing.

Other considerations for requiring additional time for an appeal to the Council are to allow for the City Manager to manage the agenda. There may be agenda's that are not conducive to an appeal hearing because of other previously agendized issues. Also, if the appeal is filed in a month when there is a 5th Monday that would extend the time for agendizing by another week.

Therefore, considering the 15 working days necessary to process the application and the subsequent appeal timelines, it is reasonable to require that an applicant submit an application at least 60 days in advance if they want to preserve their right to appeal to the City Council.

ALTERNATIVES CONSIDERED:

The City Council may give first reading to the ordinance as proposed, or direct staff to amend the proposed ordinance as directed by the City Council.

FISCAL REVIEW:

There is no fiscal impact.

LEGAL REVIEW:

This report, the proposed ordinance and resolutions attached have been prepared by the City Attorney's Office and no further legal review is necessary.

CONCLUSION:

The proposed ordinance is presented to the City Council because the City's current special event ordinance is outdated based on recent case law. It is anticipated that the proposed revisions will update those provisions and bring them into conformance with the current state of the law.

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Director of Finance

DISTRIBUTION: Allan Roeder, City Manager
Tom Wood, Acting City Attorney

- ATTACHMENT:
1. [Proposed ordinance regulating special events](#)
 2. [Current Special Event Ordinance](#)
 3. [Resolution consolidating special event fees with City's Annual fee resolution](#)
 4. [Resolution establishing pre-designated event routes](#)