

TAB 1

POINT PAPER

CONSIDERATION OF AMENDMENT TO THE REQUIREMENTS RELATING TO SPECIAL FUNCTION PERMITS

August 17, 2009

ISSUE: In reviewing the existing City Code requirements, the Mayor and City Commission have become aware of issues related to the extraordinarily broad requirements in the Code for the need for a Special Function Permits. This resulted in a discussion relating to the appropriate time to require special function permits and the criteria for issuance of a special function permit.

BACKGROUND: Based on discussions with the Commission, the draft ordinance narrows the scope of a Special Function Permit to:

1. Events or organized activities taking place on city property where the number of people expected to attend will be 50 or more people;
2. All activities which require the closing of a city street or sidewalk; and
3. Any promotion or sale activities on city property.

City meetings, activities and events are exempt from requiring a Commission approved Special Function Permit. An exception has also been added for events or activities where the sponsor entering into a facility use agreement and insurance is provided pursuant to Section 19-179. There has been some debate on the number of attendees of an event necessary to require a Special Function Permit, but the draft presently remains at 50 subject to further Commission direction.

The other significant revision involves the clarification of the insurance requirements. The draft language retains the indemnification language, but effectiveness of such language in many cases is questionable depending on the assets of the sponsor and the authority of that sponsor to bind an organization.

DISCUSSION: Four issues were raised at the prior City Commission meeting for which staff needs direction for drafting purposes:

1. At what number of attendees of an event does the Commission wish to review Special Function Permits? The current draft provides for the need for a Special Function Permit when 50 or more people are expected to attend. There was some discussion on raising this number to 75, but the exemption for uses with facility use agreements and insurance may limit the effect of the cap.

2. What should happen if the Commission is not scheduled to meet between the time of the application submittal and the event?

The current ordinance provides for possible administrative approval and the Commission discussed a firm deadline for submittal of 30 days in advance of the event with no possibility of administrative approval if one misses the deadline. Both approaches have drawbacks. The possibility of administrative approval removes review by the Commission. A 30-day in advance submittal requirement would prevent a number of events from occurring because this type of application is often not submitted in a timely manner. One possible alternative is to provide that if the application is submitted too late for Commission consideration at a scheduled meeting, then it may receive administrative approval but only after written notice to the Commission of the intent to approve. If a Commissioner requests a special meeting, within a specified period of not less than 48 hours after transmittal of the Notice of Intent, a special hearing will be held to review and consider the event. If no special meeting is requested, then Special Function Permit may be administratively approved.

3. In addition to providing insurance, should the Sponsor have to indemnify the City for possible injuries or damages related to the event? It is suspected that many signatories do not understand this provision, and if they did, they possibly would not sign the indemnification, would not have the authority to sign the indemnification or have limited assets to pursue in the event of an incident.
4. Should the proposed Sponsor be required to attend the City Commission meeting where the Special Function Permit is being considered? Currently, it is at the Sponsor's option and risk, but the Commission can consider the application.

ORDINANCE 09-___

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, PERTAINING TO THE AMENDMENT OF THE PROVISIONS RELATING TO THE REQUIREMENTS FOR AND ISSUANCE OF SPECIAL FUNCTION PERMITS; UPDATING CODE LANGUAGE FOR INTERNAL CONSISTENCY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law, and to enact ordinances in furtherance thereof; and

WHEREAS, within the above-referenced grant of powers, the City of Palmetto (the "City") has the authority to regulate conditions and activities within the City for the protection of the public health, safety and welfare; and

WHEREAS, The City regulates certain occasion or temporary uses related to City property, streets and rights of way through the use of Special Function Permits; and

WHEREAS, City staff and the City Attorney have informed the City Commission that the current City Ordinance regarding Special Function Permits could be broadly interpreted beyond the intent of the City Commission, and

WHEREAS, the City Commission has expressed a desire to clarify and update the insurance and indemnification requirements for Special Function Permit to protect the City; and

WHEREAS, the City Commission finds that it is in the best interest of the public to clarify where a Special Function Permit is required and under what conditions it is appropriate to issue such a Special Function Permit; and

WHEREAS, consistent with the findings stated above, the City Commission has determined that adoption of this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PALMETTO, FLORIDA, as follows:

Section 1. **Findings of Fact.** The above “WHEREAS” clauses are adopted herein as findings of fact.

Section 2. **Revision Language.** Chapter 19, Sections 19-171 through 19-180, inclusive, of the City of Palmetto Code of Ordinances are hereby amended to read in their entirety as follows:

Sec. 19-171. Established

There is hereby established a special function permit for the temporary use of city owned property or facilities.

Sec. 19-172. Limits of permit.

A special function permit shall be granted, upon proper application and payment of established fees, for the limited purposes set forth in such application, or as modified in the permit.

Sec. 19-173. Uses requiring a special function permit.

A special function permit shall be required for all events or organized activities which take place on city property where the number of people reasonably expected to attend will be fifty (50) or greater, all activities which require the closing or other disruption of city streets or sidewalks, and all promotional or sales activities on city property. Additionally, uses requiring a special function permit shall include, but are not limited to: Promotional or sales activities, sporting events, sidewalk sales or bazaars, rummage sales, flea markets, Christmas tree sales, holiday events, charitable and other fund raising events, parades, plant sales, grand openings, art shows, fairs, festivals, revivals, filming productions and all other similar functions of a temporary nature. City meetings, activities and events are exempt from obtaining a special function permit. Events or activities for which a facility use agreement has been entered and insurance has been provided for the City pursuant to Section 19-179 shall be exempt from obtaining a Special Function Permit.

Sec. 19-174. Application.

Application for special function permits shall be made available through the office of the City Clerk during normal business hours. Each application shall identify a sponsor for the event or activity. To the extent practicable, a completed application for a permit shall be filed with the office of the City Clerk at least thirty (30) calendar days prior to the planned event.

Sec. 19-175. Review and approval of application.

Upon filing of the application for a permit, the City Clerk shall route the application to all department heads for review and sign-off and then present the application to the City Commission for approval. A majority vote of City Commission is required to approve the application and reasonable conditions necessary to protect public safety and public property may be placed on such approval. Sponsors are recommended to attend the City Commission meeting in order to be able to respond to questions.

Sec. 19-176. Review if City Commission unable to vote.

In the event the City Commission is not scheduled to meet on an application prior to the date of the event, the City Clerk, with the approval of the Mayor, shall approve or disapprove the application and report such action to the City Commission without delay.

Sec. 19-177. Fee and security deposit required.

After use, the facility shall be returned to a condition substantially consistent with its condition prior to the use. Any damage or cleaning necessary to return the facility to such prior condition shall be the responsibility and the cost of sponsor. A fee and security deposit shall be required for use of City property or facilities pursuant to a special function permit. The required fee and security deposit amounts shall be established, and amended from time to time, by resolution of the City Commission. The City Commission shall have the authority to require an additional security deposit for a particular activity or function where it finds that doing so is in the best interest of the public health, safety or welfare.

Sec. 19-178. Alcoholic beverages at event for which permit has been issued.

The sale or consumption of alcoholic beverages on city property by any person sponsoring or attending an event for which a special function permit has been issued is prohibited.

Sec. 19-179. General liability insurance to be procured.

Unless waived or reduced by the City Commission because of the minimal risk of liability for the City, a policy of general liability insurance shall be procured by the sponsoring organization, which shall insure the city, its officers, employees and agents from liability arising out of the event for which the permit is issued. Evidence of such insurance shall be a condition of issuance of a permit. The required amount of such insurance shall be established by the City. The City Commission may require additional types of insurance depending on the use and type of facility. Additionally, the sponsor shall indemnify and hold harmless, the City, its officers, employees and agents from any and all liability arising from such event.

Sec. 19-180. City facility rentals.

The city permits individuals and organizations to rent certain city property and facilities for exclusive use pursuant to established policies and procedures. Where exclusive use of specific city property or facilities is permitted under an approved city facility rental agreement, a special function permit shall not be required if the number of people reasonably expected to use the property or facility is estimated to be less than fifty (50).

Section 3. Repeal of Inconsistent Ordinances. This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other

provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	September 14, 2009
PUBLICATION DATE	September 18, 2009
SECOND READING	September 28, 2009

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this 28th day of September, 2009.

By: _____

Shirley Groover Bryant, Mayor

ATTEST:

By: _____

James R. Freeman, City Clerk