



Legislation Text

File #: 23-0721, **Version:** 3

TO: Mayor and City Council

FROM: Richard J. Veenstra
Corporation Counsel

DATE: January 31, 2024

SUBJECT:
Revisions to the City's Special Events Ordinance.

PURPOSE:

To make various amendments to the City's Special Events Ordinance to address areas of possible legal risk as identified by the Federal District Court and to make other improvements..

BACKGROUND:

In 2022, the Aurora Pride Parade was nearly cancelled due to a lack of police officers willing to volunteer for additional overtime assignments. In order to avert cancellation and a high probability of unrest resulting from cancellation, the City offered officers a unique "triple-time" incentive to induce their participation. The incentive worked and the parade commenced as planned.

Shortly thereafter, in compliance with the Special Events Ordinance, the City sent the parade's organizers, Aurora Pride, an invoice for the full cost of the police overtime. Aurora Pride ("Pride") remitted payment to the City for police costs excluding the triple time incentive and conditioned the City's acceptance of the payment as full satisfaction of its financial obligations to the City. The City declined to accept the conditional payment, but offered to set the matter aside while Pride and the City discussed areas of concern with the City's Special Events Ordinance.

These discussions did not lead to a consensus as to what amendments to the Special Events Ordinance were necessary to prevent the situation that occurred in 2022 from reoccurring. In January, and under threat of litigation from Pride, the City advanced an amendment to the Special Events Ordinance to provide for various contingencies in the event that adequate police protection was not available. Pride, dissatisfied with the City's approach, promptly filed suit seeking declaratory and injunctive relief. At nearly the same time, Pride applied for a permit to host another parade in June of 2023. City staff promptly began working to process the application.

At the City's instance, the District Court allowed for limited discovery and a full evidentiary hearing on Pride's motion for a preliminary injunction. This allowed the City to make a far more complete record than it would otherwise be able to in the setting.

Though the Court found no evidence of animus directed towards Pride, it did hold that certain parts of the Special Events Ordinance "likely" infringed upon the First Amendment. The Court also rejected

several of Pride's challenges to other portions of the Ordinance -- and in fact Pride itself abandoned some of its initial claims prior to the hearing. Specifically, the Court enjoined the City from exercising any of the contingency measures intended for staffing shortfalls, but as it turned out, there were no staffing shortfalls. By the time the Court made its ruling, a sufficient number of officers had already volunteered making any contingency procedures irrelevant. The 2023 Parade proceeded as planned with no interference or issues with staffing.

The proposed amendments to the Special Events Ordinance are intended to proactively respond to the Federal Court's preliminary injunction as well as make improvements to other areas of the Code not impacted by the injunction.

Since the initial draft of this ordinance was prepared in September, we have met with Federal Magistrate Judge Kim and representatives of Pride on multiple additional occasions relative to potential Ordinance amendments. Many of the draft amendments have nothing specifically to do with Pride or the litigation and are proposed simply to make the ordinance easier for the City and applicants to follow and understand. Many proposed changes are merely semantic or provide general clarification. Following the January 16, Rules, Administration, and Committee meeting, Pride identified three very minor areas of potential improvement to the Ordinance. The City's legal team reviewed these items and believed they were appropriate to include. They may be found in Secs. 41.5-114(b)(4), 41.5-115 and 41.5-171(a) and (f).

DISCUSSION:

Though the proposed amendment occupies nearly 70 double spaced pages, the following is a summary of the more substantive changes:

The definition of crowd control further clarifies that crowd control costs do not include mitigation and protection against a particularized safety risk associated with a particular Special event.

A more detailed definition of "parade" has been added.

New language has been added relieving small gatherings of 50 people or less from the requirement to go through the permitting process. Similar relief is provided to "spontaneous events."

Additional language has been added relating to the City's commitment to give priority to legacy events such as the Pride parade.

New language has been added allowing the coordinator to impose additional requirements on an applicant if the applicant has breached a material term of a special event permit during the previous two (2) years.

More detailed definitions have been added to the various tiers of events. For example, a Tier I event contemplates the use of more than two City blocks with an estimated number of attendees in excess of 1,000.

Substantial new language has been added to Section 41.5-114 defining relative cost and expense responsibilities between the City and permittees. In particular, labor costs are defined as

wages or salaries of City employees rendering such services as traffic control, crowd control, fire safety, and medical safety functions directly attributable to the particular event; and the City will provide current information regarding estimated costs.

A provision has been added allowing for the allocation of additional costs in the event a permittee desires to alter the event in a manner unrelated to content which would increase costs associated with the City's various crowd control and related responsibilities.

A provision has been added calling for the coordinator to provide Tier I and Tier II permittees with a preliminary City service cost estimate. More detailed provisions are included in the ordinance relative to the Permittee's obligation to make a 25% deposit and to pay a post-event bill.

Additional insurance language has been added if it appears that a special event creates a particular unusual potential danger to the public, such as the use of pyrotechnics, drones, motorized vehicles, and the like.

A requirement has been added calling for detailed explanations and proof of code compliance in the event alcohol and food are to be served.

Specific requirements for site circulation, parking, transportation, and the like have been added.

Further clarifying language has been added that a refusal or unwillingness of City employees to volunteer for work assignments shall not be a basis for the City to determine that it lacks enough resources for an event.

The review and final action deadlines for the coordinator have been reduced. For example, for a Tier I or Tier II event, the Coordinator will take final action within ten (10) business days after the application is deemed complete, as opposed to the previous 30 calendar days.

Specific new language has been added relating to grounds for denying an application, along with enhanced pre-decision notification and additional compliance requirements.

More detailed appeal procedures have been added in the case of a denial or revocation of a permit.

A commitment by the City to help permittees develop an emergency action plan has been added.

More detailed language has been added addressing the limits of a permittee's potential responsibility for loss of or damage to public property..

IMPACT STATEMENT:

The proposed amendments have been reviewed by the Special Events Division and should not pose significant challenges to implement. The manpower shortage experienced in advance of the 2022 Pride Parade was likely attributable to factors unlikely to repeat themselves, particularly given the

relative scarcity of police overtime assignments as the department has become more fully staffed.

While each special event is unique, the marginal cost associated with mitigation and protection against a particularized safety risk based on a potential hostile reaction to a particular special event which the City may no longer pass along to a permittee will generally represent a negligible part of the overall cost of police protection.

Further, adoption of this ordinance will relieve the City of the burden of having to defend the claims related thereto to a final appealable judgment.

RECOMMENDATIONS:

That the City Council approve this Ordinance.

cc: Rules, Administration, and Procedures Committee



CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____
DATE OF PASSAGE _____

An Ordinance amending Chapter 41.5 of the Code of Ordinances pertaining to special events. WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City Council has previously enacted Chapter 41.5 of its Code of Ordinances to provide for the permitting of special events in the City; and

WHEREAS, the City Council finds that it is necessary and expedient to make certain changes to the Chapter 41.5; and

WHEREAS, said changes have been reduced to writing as set forth in Exhibit A;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows: that Chapter 41.5 of the Code of Ordinances shall be and hereby is amended as more fully set forth in Exhibit A, and further

BE IT ORDAINED, that the costs of City personnel or equipment related to special events conducted

under former versions of Chapter 41.5 occurring on or before December 31, 2023, and which remain unpaid or for which invoices have not been issued, shall be deemed paid in full as of the effective date of this Ordinance, and further

BE IT ORDAINED, that this Ordinance shall become effective immediately upon its adoption and approval.