

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion of Draft Ordinances Establishing a Special Events Permit Code and Amending the City Right-of-Way Code.		Meeting Date: April 27, 2009
Department: Legal	Attachments: 1. Draft Ordinance No. 511, special events permit. 2. Draft Ordinance No. 512, amending right-of-way permits. 3. Draft rules and regulations.	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Chris Bacha		
Telephone: (206) 248-5535		
Adopted Work Plan Priority: Yes No X	Work Plan Item Description:	
PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for Council to discuss draft ordinances that would (1) adopt procedures governing application for and issuance of special events permits, and (2) amend the right-of-way code to modify the process for issuing right-of-way permits.		
BACKGROUND (Include prior Council action & discussion): The City currently does not have a comprehensive and detailed process for submittal and processing of applications for use of public property for special events such as, carnivals, markets, festivals, street fairs, parades, rallies, marches and demonstrations and there is no clear process for issuing events permits associated with use of public parks that will impact public rights-of-way or emergency services. As a result, the City is not consistently able to permit such events in a way that provides for cost recovery or protects the City from liability. Further, the current review process does not ensure that applications for special events are reviewed by all necessary departments such as police, fire, the health department, community development, public works, and legal. WCIA has also recommended that the City adopt comprehensive rules and regulations to set forth the standards for issuance of special events permits to reduce risk to the City associated with such uses of public property. The proposed special events permit ordinance and right-of-way ordinance would establish detailed application and review requirements and modify existing procedures set forth in the right-of-way code. The proposed ordinance would also authorize the City Manager to establish administrative rules and regulations governing the application and review process.		
OPTIONS (Including fiscal impacts): 1. Accept the ordinances as drafted and place on a future Consent Agenda or Business Agenda. 2. Refer the ordinances to City staff for further revisions and discussion and place on future Council Agenda 3. Decline to place the proposed ordinances on a future Council Agenda.		
Administrative Recommendation: Recommend placing the ordinances, and rules and regulations on the May 4, 2009, Agenda for approval.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: None required.		
Submitted by: Christopher Bacha Administration _____	Mike Martin City Manager _____	
Today's Date: April 21, 2009	File Code: R:/CC/AgendaBill2009/0427091s-1 special events row	

CITY OF BURIEN
WASHINGTON
ORDINANCE NO. 511

**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,
RELATING TO SPECIAL EVENTS; ADDING A NEW CHAPTER TO
TITLE 12; ESTABLISHING REQUIREMENTS FOR OBTAINING A
SPECIAL EVENTS PERMIT; AND PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Burien is host to many special events throughout the year; and

WHEREAS, the City Council recognizes the value of special events as it relates to the positive promotion of commerce and tourism within the City and the creation of unique venues for expression and entertainment that are not normally provided as part of governmental services; and

WHEREAS, the City Council also recognizes that special events may impact the operations of the City including the provisioning of its emergency services, safe travel upon the public rights of way, and the availability of use of public property including public parks and facilities; and

WHEREAS, the City Council finds that the City should have a comprehensive procedure for permitting of special events which: (1) establishes a process for the coordinated review and permitting of special events, (2) provides the City with the ability to monitor special events to make sure that any city department that may be affected has the opportunity to review and comment, (3) provides the City with the opportunity to review plans for special events to make sure that they are in compliance with the municipal code, (4) encourages responsible planning prior to the holding of special events, and (5) provides adequate protection to residents, visitors and property owners who may be adversely effected by such special events, including, ensuring that special events do not create disturbances, become nuisances, menace or threaten life, health, and property, disrupt traffic or threaten or damage private or public property, (6) decreases any liability risk, (7) protects the rights and interests granted a special event permit holder, (8) establishes a mechanism for the City to be able to recover all or any part of the added costs incurred by the provision of additional or extraordinary support services, and (9) protects the rights of its residents and visitors to engage in protected free speech expression activities and yet allow for the least restrictive and reasonable, time, place and manner regulation of those activities within the overall context of rationally regulating special events that have an impact upon public facilities and services; and

WHEREAS, it is not the intent of the City Council to regulate in any manner the content of speech or infringe upon the right to assemble, except for the time, place and manner of speech and assembly, and this ordinance should not be interpreted, nor construed otherwise; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to adopt a new chapter relating to special events permitting; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Special Events Permitting Established. Title 12 of the Burien Municipal Code is hereby amended by the addition of new Chapter 12.15 to be known as Special Events Permitting Code to read as follows:

Section 2. Definitions.

“Activity” shall, for purposes of the definition of “special event”, mean and refer to any one or more of the following: outdoor athletic events, promotional or fund-raising events, weddings, block parties, socials, street dances, parades, marches, rallies, demonstrations, public assemblies, performances, exhibitions, entertainment or amusement events, farmers markets, public markets, craft fairs, parking lot sales, public street or public sidewalk sales, tent sales, displays, filming of movies, taping of video or television shows, fireworks displays, motorcades, motorized vehicle races or contests, soapbox derbies, rodeos, and tournaments.

“Building” means any fully enclosed permanent structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind. It includes push carts or sidewalk cafes for which the sale of goods, food, or beverages has been authorized.

“Demonstration” means a public display of group opinion as by a rally or march, the principal purpose of which is expressive activity.

“Departmental service charges” means the actual costs which a department of the city incurs in connection with activities for which a permit is required under this article, including, but not limited to, costs associated with fire safety, traffic and/or pedestrian control, water safety, the closure of streets or intersections, the diverting of traffic, the salaries of city personnel involved in administration or coordination of city services for the event, the cost to the city to provide support personnel, equipment, materials and supplies, and related city costs such as fringe benefits or employee overtime.

“Event Organizer” means any person who conducts, manages, promotes, presents, sponsors, organizes, aids, or solicits attendance at a special event.

“Expressive Activity” includes conduct, the sole or principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of opinion, views, or ideas and for which no fee or donation is charged or required as a condition of participation in or attendance at such activity. For purposes of this chapter, expressive activity does not include activities for which the principal purpose is entertainment.

“Exhibition, Entertainment or Amusement events” shall have their ordinary meanings and shall include the following organized events: arts and craft shows, concerts, carnivals, circuses, fairs, shows, theatrical performances, musical performances, and festivals, including any exhibition involving amusement attractions or rides, spectacles, animals, side shows, games, and the like

“Extraordinary services” shall mean and refer to services above and beyond those routinely performed by the city police, fire and/or public works, and parks departments as a normal course of regular duty. Extraordinary services include but are not limited to those involving the closing of public streets, crowd control and security, and traffic control.

“March” means an organized walk or event whose principal purpose is expressive activity in service of a public cause.

“Organized” in addition to its ordinary meaning shall mean, functioning within a formal structure, as in the coordination and direction of planned and controlled activities.

“Outdoor Athletic event” means an organized competitive or recreational activity in which a group of persons collectively engage in a sport or form of physical exercise that takes place in whole or in part outdoors including, by way of example and not limitation, team sports, tournaments, races, marathons, volksmarches and volkssports. Sport or form of physical exercise includes, by way of example and not limitation, bicycling, walking, running, sprinting, jogging, skateboarding, rollerblading and roller skating.

“Parade” means an organized group of persons, animals, bicycles, vehicles, carts, balloons, musical units and/or floats, or any combination thereof, travelling in public procession and having a common purpose, design, destination or goal, and the principal purpose of which is not expressive activity.

"Person" means any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business trust or manager, lessee, agent, servant, officer or employee or any of them, except where the context clearly requires a different meaning.

“Promotional or Fund-Raising Events” shall have their ordinary meanings and shall mean and refer to organized activities intended to promote causes, products, or services or raise funds primarily for charitable purposes, and shall include, by way of example and not limitation, bike-a-thons, walk-a-thons, and fun runs.

“Rally” means a gathering whose principal purpose is expressive activity, especially one intended to inspire enthusiasm for a cause.

Right-of-way” means, within the City of Burien, all public right-of-way and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, paths, trails, sidewalks, bikeways and horse trails, whether improved, unimproved, or unopened, including the air rights, sub-surface rights and easements related thereto, and over which the City of Burien has authority and control.

“Sidewalk” means that portion of a right-of-way, other than the roadway, set apart by curbs, barriers, markings, or other delineation for pedestrian travel.

“Sign” means any sign, pennant, flag, banner, inflatable display, or other attention-seeking device.

“Special event” shall mean any temporary organized activity sponsored by an event organizer which takes place, in whole or in part, outdoors, will result in people congregating at the event location for a particular and limited purpose and time, and meets any one or more of the following criteria:

- (1) City Property. The activity will be conducted in whole or in part on city owned or controlled land that is not a City park or right-of-way;
- (2) City Parks. The activity will be conducted within a City park or facility, as those terms are defined at Section 7.10.020 of the Burien Municipal Code, and the parks director determines that the activity requires a special events permit because,
 - (a) The activity is likely to obstruct, delay or interfere with the free and normal use of public rights-of-way or other public property of the city within the vicinity of the event; or
 - (b) The activity is likely to result in the need for the City to provide extraordinary services in response to or arising out of the special event; or
 - (c) The activity will require exclusive use of all or a substantial portion of a City park.

Criteria to be considered include by way of example, and not limitation, available parking capacity in the vicinity of the special event, likely pedestrian and vehicular routes for travel to and from the special event, availability of public transportation, the number of days of the special event, the hours of the special event, the number of people anticipated to attend the special event, the capacity and safety of the permanent and temporary structures intended to house the special event, the proximity and availability of health and sanitation services, the

proximity and availability of emergency services, the activity(ies) to be engaged in as part of the special event, the historical impacts of the special event or comparable special events, if known, upon use of public rights of way and public property and public services including police and fire, and other similar considerations;

(3) Rights-of-Way. The activity will be conducted in whole or in part on city rights-of-way;

(4) Sales Not Already Permitted. The activity will involve the sale of merchandise, food or beverages outdoors where not already permitted by city code; whether by for profit or nonprofit organizations;

(5) Public Disturbance Noise. The activity will include use of sound amplification, public address, loud speaker, audio, video, or television systems or other devices likely to result in public disturbance noise in violation of Chapter 9.105 BMC as now or hereafter amended.

“Special event permit” means a permit issued under this chapter.

“Special event venue” means that area for which a special event permit has been issued.

“Tax-exempt nonprofit organization” means an organization that is exempted from payment of income taxes by federal or state law and has been in existence for a minimum of six months preceding the date of application for a special event permit.

“Vendor” means any person who sells or offers to sell any goods, food, or beverages within a special event venue.

Section 3. Special Event Permit Required/Purpose.

(1) Purpose. It is the purpose of the City to establish a process for permitting special events that impact City right-of-way, public property, other facilities or services. It is recognized that these special events enhance the Burien lifestyle and provide benefits to the citizens through the creation of venues for expression and entertainment that are not normally provided as a part of governmental services. By recognizing special event venues, it is further intended to supplement land use and street right-of-way regulations, to provide a coordinated process for the regulation of certain activities to be conducted in conjunction with special events, to ensure the health and safety of patrons of special events, to prohibit illegal activity from occurring within special event venues, and to protect the rights and interests granted to a special event permit holder. It is further intended to create a mechanism for cost recovery without having an adverse effect on those events that contribute to the community. It is also the intent of the City to protect the rights of its citizens to engage in protected free speech expression activities and yet allow for

the least restrictive and reasonable, time, place and manner regulation of those activities.

(2) Permit Required. Except as provided elsewhere in this chapter, an event organizer shall obtain a special event permit from the City Clerk for all special events.

(3) City Clerk. The City Clerk, in coordination with other involved City Departments and public agencies, is authorized to issue permits for special events occurring within the City limits, pursuant to the procedures established in this chapter and the rules and regulations promulgated by the City Manager. The City Clerk is authorized to determine the special event venue. The City Clerk shall set reasonable boundaries for the special event venue, balancing the special event requirements and public health, safety, and welfare. The City Clerk is authorized to coordinate the issuance of a special event permit with other public agencies through whose jurisdiction or property the special event or portion thereof occurs and to issue a special event permit upon the concurrence of other public agencies involved.

(4) Rules and Regulations. The City Manager is authorized to promulgate additional rules and regulations that are consistent with and that further the terms and requirements set forth within this chapter and the provisions of law that pertain to the conduct and operation of a special event.

Section 4. Exceptions To Special Event Permit Requirement.

A special event permit is not required for any of the following activities, provided that, the special event shall be conducted in accordance with all laws and regulations governing public safety or health:

- (1) Funeral Procession. Funeral processions by a licensed mortuary or funeral home;
- (2) Wedding processions. Wedding processions conducted on public rights-of-way wherein applicable traffic regulations, laws or controls are complied with;
- (3) School, Church & Governmental Events. Any special events held or conducted by or on behalf a public or private school, college or school district, the State of Washington or other governmental entity or any church that is legally operated in the city, so long as the activity or event is conducted on property owned, used, or leased by the entity or its sponsor and is for the benefit of the entity that owns, uses, or leased the property on which the activity takes place;
- (4) Expressive Activities on Sidewalks. Rallies, marches, demonstrations and picketing which take place on public sidewalks crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls and laws applicable to use of public sidewalks;
- (5) Special Event Facilities. Events conducted at a facility designed for the special event purpose or upon facilities where such events are normally held, such as churches,

events/convention centers, schools, athletic fields, auditoriums, stadiums, theaters, etc.;

(6) Regularly Scheduled Athletic Events. Regularly scheduled outdoor athletic events conducted on property where such events are normally held.

(7) Outdoor Demonstrations on Public Property. Demonstrations on publicly owned property (other than public rights of way), unless,

(a) The activity is likely to obstruct, delay or interfere with the free and normal use of such public property or the public rights-of-way; or

(b) The activity is likely to result in the need for the City to provide extraordinary services in response to or arising out of the special event;

(8) Other Authorized Uses. Authorized uses of public property permitted by other provisions of the Burien Municipal Code; and

(9) Governmental Activities. Activities conducted by a governmental agency acting within the scope of its authority.

Section 5. Issuance Of A Special Event Permit Does Not Obligate City Services.

Issuance of a special event permit pursuant to this chapter does not obligate or require the City of Burien to provide City services, equipment, funding or personnel in support of a special event.

Section 6. Time For Filing Application For Special Event Permit.

(1) Except as provided at subsection 2 below, application for a special event permit shall be filed with the City Clerk not less than 45 calendar days, nor more than two years, before the time when it is proposed to conduct the special event. Upon good cause shown and provided that no risk or burden to the City ensues, the City Clerk has discretion to allow a later filing.

(2) Application for an expressive activity special event permit shall be filed with the City Clerk not less than seven calendar days, nor more than two years, before the time when it is proposed to conduct the expressive activity special event. Upon good cause shown and provided that no risk or burden to the City ensues, the City Clerk has discretion to allow a later filing.

(3) Except as otherwise provided herein, applications for a special event at City owned buildings and City parks shall be submitted to officials responsible for such buildings and in accordance with such time limits and procedures as may be established for such buildings and parks and are not subject to the provisions of this chapter.

Section 7. When Application For Special Event Permit Is Deemed Complete.

An application for a special event permit is deemed completed when the applicant has provided all of the information required pursuant to the Special Event Permit Rules and Regulations.

Section 8. Date Of Special Event Not Confirmed Until Permit Issued.

Notwithstanding the City Clerk's acceptance of a completed application, no date shall be considered confirmed until a special event permit is issued.

Section 9. Special Event Permit Application.

The application for a special event permit shall be submitted and processed in accordance with the special permit rules and regulations promulgated by the City Manager.

Section 10. Denial Of A Special Event Permit Application; Appeals From Denial.

(1) If the City Clerk denies the application for the special event permit he or she shall notify the applicant in writing as soon as is reasonably practical.

(2) The denial of a special event permit may be appealed to the City Manager or his or her designee.

(3) An appeal shall be made in writing within five calendar days of the date of the written denial. An appeal is made by filing a written petition with the City Clerk, setting forth the grounds for appeal.

(4) The City Manager, or his or her designee, shall hear the appeal as soon as is reasonably practicable. The City Manager shall determine if the application was denied by the City Clerk based upon an error of fact or law and shall limit his/her review to the record before the City Clerk; provided that, the City Manager may, in his or her discretion allow submission of additional evidence relevant to the alleged error of fact or law.

Section 11. Display Of Special Event Permit Required.

A copy of the special event permit shall be displayed in the special event venue in the method prescribed by the City Clerk applicable to the particular special event and shall be exhibited upon demand of any City official.

Section 12. City Clerk's Action On Special Event Permit Application.

(1) Except as provided in Section 12 (2) & (6), the City Clerk shall endeavor to take

final action upon a completed application for a special event permit within thirty (30) days of receipt.

(2) The City Clerk is not required to take final action upon any special event permit application prior to 180 calendar days before the special event.

(3) The City Clerk is not required to take final action on an incomplete or untimely special event permit application.

(4) The City Clerk is not required to take final action upon two or more special event permit applications submitted by the same applicant unless two or more weeks shall have elapsed between the respective dates of submission of each.

(5) Final action on a completed special event permit application shall consist of one of the following:

(a) Issuance of a special event permit in accordance with the terms of the application; or

(b) Issuance of a special event permit in accordance with the terms of the application, as modified by mutual agreement between the City Clerk and the applicant; or

(c) Denial of the special event permit application by the City Clerk.

(6) The City Clerk shall take final action upon a timely completed application for an expressive activity special event permit as soon as reasonably practicable after receipt of a completed application, and in any event prior to the time set for the expressive activity special event.

Section 13. Insurance Required To Conduct Special Event.

The event organizer of a special event must possess or obtain insurance in the form and with coverages and limits as set forth in the Special Events Permit Rules and Regulations.

Section 14. Revocation Of Special Event Permit.

(1) Any special event permit issued pursuant to this chapter is subject to revocation, pursuant to this Section 14.

(2) A special event permit may be revoked if the City Clerk, or his or her designee, or the Burien Police Chief, or his or her designee, or the City Manager, or his or her designee, determines:

(a) That the special event cannot be conducted without violating the standards or conditions for special event permit issuance; or

(b) The special event is being conducted in violation of any condition of the special event permit; or

(c) The special event poses a threat to health or safety; or

(d) The event organizer or any person associated with the special event has failed to obtain any other required permit; or

(e) The special event permit was issued in error or contrary to law.

(3) Except as provided in Section (4) below, notices of revocation shall be in writing and specifically set forth the reasons for the revocation.

(4) If there is an emergency requiring immediate revocation of a special event permit, the City Clerk, or responsible public official, may notify the permit holder verbally of the revocation.

(5) An appeal from a revocation shall be handled in the same manner and under the same time requirements as denials of special event permits, pursuant to Section 10.

(6) It shall be unlawful to operate a special event after revocation of a special event permit.

Section 15. Cost Recovery For Special Events.

(1) Except as otherwise provided in this chapter or when funded or waived by the City Council by resolution or ordinance, for any special event, the City Clerk shall impose a fee for departmental services charges.

(2) The City Clerk shall require payment of departmental service charges, based upon a reasonable estimate thereof, at the time the completed application is approved, unless the City Clerk for good cause extends time for payment.

(3) If the event organizer fails to clean the special event venue or route of the special event both during and upon completion of the special event and to return the area or route to the same condition of material preservation and cleanliness as existed prior to the special event, the event organizer will be billed for actual City costs for cleanup and repair of the area or route occasioned by the special event. If the event organizer failed to comply with such requirements under a previously issued special event permit, the City Clerk may require the event organizer to deposit adequate surety in the form of cash or bond.

Section 16. Expressive Activity Special Event.

When a special event permit is sought for a demonstration, rally, or march, the following exceptions shall apply:

(1) Where the special event will not require temporary street closures, cost recovery shall be limited solely to a fee based on the administrative cost of processing the permit application.

(2) The insurance requirement shall be waived provided that the event organizer or an officer of the event organizer has filed with the application a verified statement that he or she intends the special event purpose to be First Amendment expression and the cost of obtaining insurance is financially burdensome and would constitute an unreasonable burden on the right of First Amendment expression. The verified statement shall include the name and address of one insurance broker or other source for insurance coverage contacted to determine premium rates for coverage.

(3) Where the special event will require temporary street closures and any one or more of the following conditions are met requiring the City to provide services in the interests of public health, safety, and welfare, the City Clerk may condition the issuance of the special event permit upon payment of costs incurred by the City to a maximum of \$500. Any fee schedule adopted by the City will contain a provision for waiver of or a sliding scale for payment of fees for city services, including police costs, on the basis of indigency, so that an indigent applicant's First Amendment rights are not impaired in any fashion due to wealth.

(a) The special event will substantially interrupt public transportation or other vehicular and pedestrian traffic in the area of its route, and/or

(b) The special event will cause an irresolvable conflict with construction or development in the public right-of-way or at a public park or public facility, and/or

(c) The special event will block traffic lanes or close right-of-way during peak commuter hours on weekdays between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on right-of-way designated as arterials by the City's Public Works Department, and/or

(d) The special event will require the diversion of police employees from their normal duties, and/or

(e) The concentration of persons, animals, or vehicles will unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the right-of-way, and/or

(f) The special event will substantially interfere with another special event for which a permit has already been granted or with the provision of City services in support of other scheduled special events, and/or

(g) The special event will have significant adverse impact upon residential or business access and traffic circulation in the same general venue.

(4) With regard to the permitting of expressive activity special events where the provisions in this section conflict with the provisions in any other section of this chapter, the provisions of this section shall prevail.

Section 17. Authorized Special Event Vendors.

(1) The issuance of a special event permit confers upon the permit holder or event organizer the right to control and regulate the sale of goods, food, and beverages within the special event venue in accordance with the terms and conditions of the special event permit. The permit holder may grant no greater rights or privileges to vendors than the rights or privileges granted to the permit holder pursuant to the special event permit.

(2) Vendors authorized to sell goods, food, or beverages in the special event venue shall display their authorization in the manner required by the City Manager. Only vendors displaying the required authorization shall be allowed to sell goods, food, or beverages in the Special Event Venue.

Section 18. Unlawful To Conduct Or Promote Attendance At Special Event Without Permit.

(1) It is unlawful for any person to conduct or manage a special event without a special event permit as required pursuant to this chapter.

(2) It is unlawful for any person during the 180 day period prior to a special event that will take place in whole or in part upon the right-of-way or City property, to promote any such special event prior to submittal of a special event permit application.

Section 19. Other Permits And Licenses.

The issuance of a special event permit does not relieve any person from the obligation to obtain any other permit or license required pursuant to the Burien Municipal Code or any other applicable law.

Section 20. Unlawful To Sell Goods In Special Event Venue Without Authorization.

It is unlawful for any person to sell, resell, or offer to sell or resell, any goods, food, or beverages in a special event venue, except:

1. From any building; or,
2. From any tent, booth, or temporary structure expressly authorized pursuant to a special event permit.

Section 21. Cost Recovery For Unlawful Special Event.

Whenever a special event is conducted without a special event permit, when one is required, or a special event is conducted in violation of the terms of an issued special event permit, the event organizer shall be responsible for, and the City shall charge the event organizer for, all City costs incurred for personnel and equipment for a public safety response caused or necessitated by the adverse impacts of the special event or the violation of the special event permit upon public safety.

Section 22. Violation; Penalties.

1. Violation of Sections 3(2), 14(6) or 18 of this Chapter is a misdemeanor punishable by a fine of up to \$1000 or by imprisonment for up to 90 days in jail, or by both such fine or imprisonment.
2. Violation of Section 11 and 20 of this Chapter is a Class I civil infraction and punishable by a maximum fine of \$250 for each such violation.

Section 23. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 24. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2009.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Christopher Bacha
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

DRAFT

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 512

**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,
RELATING TO RIGHT OF WAY PERMITS; AMENDING CHAPTER
12.15 BMC TO CONFORM TO NEW CHAPTER 12.15 BMC (SPECIAL
EVENTS PERMITS) AND CHAPTER 12.38 BMC (STREET TREES
AND TREES ON CITY PROPERTY); AND PROVIDING FOR AN
EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY**

WHEREAS, the City Council has adopted a new Chapter 12.15 of the Burien Municipal Code that implements new requirements for the issuance of special events permits that will supercede certain parts of the right of way use permit requirements; and

WHEREAS, the City Council has previously adopted Chapter 12.38 of the Burien Municipal Code addressing use of the right of way for the maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way; and

WHEREAS, it is necessary to amend Chapter 12.18 of the Burien Municipal Code to conform to the foregoing changes to the Burien Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amending Section 12.18.010 BMC (Permit Requirements). Section 12.18.010 of the Burien Municipal Code is hereby amended to read as follows:

12.18.010 Permit requirements.

(1) Except as otherwise provided at Section 12.18.030 BMC for special events and Chapter 12.38 BMC for maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way, ~~It~~ is unlawful for anyone to make private use of any public right-of-way without first having obtained a right-of-way use permit issued by the city or to use any right-of-way without complying with all the provisions of such right-of-way use permit issued by the city.

(2) Pursuant to BMC 12.18.030(6), any telecommunications carrier or provider who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any right-of-way of the city for the purpose of providing telecommunications services shall first obtain authorization in the form of a franchise authorizing the use of such right-of-way consistent with the requirements and conditions of such franchise.

(3) All permit applicants shall, before commencing any construction in city rights-of-way, comply with all requirements of Chapter 19.122 RCW, the one number locator service.

(4) Use of the right-of-way of the City for special events shall be governed by Chapter 12.15 BMC; provided that, all special events that may alter the appearance of or disturb the surface or subsurface of the right-of-way shall be subject to the requirements for a type C permit in addition to the requirements for a special events permits.

(5) A permit shall not be required under this Chapter 12.18 BMC for the maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way of the City that is subject to the requirements of Chapter 12.38 BMC; provided that, maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way of the City that is part of other work or activities to be performed in the right-of-way of the City shall be subject to the this Chapter 12.18 BMC.

Section 2. Amending Section 12.18.030 BMC (Right-of-way use permits). Section 12.18.030 of the Burien Municipal Code is hereby amended to read as follows:

(1)Type A – Short-Term Nonprofit.

(a)Type A permits are issued for use of a right-of-way for 72 or less continuous hours for nonprofit purposes that are not classified as special events pursuant to Chapter 12.15 BMC, and which do not involve any alteration to the appearance of or a physical disturbance to the surface or subsurface of the right-of-way or any improvements located in, over, under and upon the right of way.

(b)This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses may be required to obtain a Type D annual right-of-way permit. If any of these uses are for profit, and are not classified as special events pursuant to Chapter 12.15 BMC, a Type B permit will be required.

(c) ~~Type A permits include but are not limited to the following, when for nonprofit purposes:~~

~~(i)Assemblies;~~

~~(ii)Bike races;~~

~~(iii)Block parties;~~

~~(iv)Parades/processions;~~

~~(v)Fairs, shows and exhibitions;~~

~~(vi)Parking;~~

~~(vii) Nonmotorized vehicle races;~~

~~(viii) Street dances;~~

~~(ix) Street runs or walks.~~

(2) Type B – Short-Term Profit.

(a) Type B permits are issued for uses of right-of-way for 72 or less continuous hours for profit purposes, which do not involve the physical disturbance of the right-of-way and are not classified as special events pursuant to Chapter 12.15 BMC.

(b) This type of use may involve disruption to pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 consecutive hours, a Type D annual right-of-way permit may be required.

(c) Type B permits include, but are not limited to, the following when they are for profit purposes:

(i) ~~Fairs, carnivals, shows and exhibitions;~~

~~(ii) House or large structure moves other than those which require a Type E permit;~~

(iii) Temporary sale of goods;

(iv) Temporary street closures.

(3) Type C – Disturbance of City Right-of-Way.

(a) Type C permits are issued for use of a right-of-way, for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the right-of-way but do not necessarily involve the installation of permanent structures.

(b) Type C permits include but are not limited to:

(i) Boring;

(ii) Culverts;

(iii) Curb cuts;

(iv) Paving;

(v) Drainage facilities;

(vi) Driveways;

(vii) Fences;

(viii) Landscaping;

(ix) Painting/stripping;

(x) Sidewalks;

(xi) Street trenching;

(xii) Utility installation, repair, replacement.

(c) Permanent structures not included in the above list that are placed in the right-of-way for a period over 72 hours may require a Type D annual right-of-way use permit, below. The director shall have the discretion to determine whether a Type C or D permit, or a facilities lease shall be required for any particular use or uses.

(4) Type D – Annual Right-of-Way Permit.

(a) Type D annual right-of-way permits are issued for uses in excess of 72 hours that will not physically disturb the right-of-way and are associated with long-term use of the right-of-way.

(b) The use of the right-of way for structures, facilities, and uses that involve capital expenditures and long-term commitments require this type of permit; provided, however, that more intensive long-term uses of the right-of-way such as the location of facilities and permanent structures on the right-of-way will require a facilities lease (Type F permit).

(c) Type D permits include, but are not limited to:

(i) Air rights and aerial facilities;

(ii) Bus shelters and stops;

(iii) Access to construction sites and haul roads;

(iv) Loading zones;

(v) Newspaper sale, distribution, and storage facilities;

(vi) Recycling facilities;

(vii) Sales structures;

(viii) Sidewalk cafes;

(ix) Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture;

(x) Underground rights;

(xi) Utility facilities;

(xii) Waste facilities.

(d) The director shall have the discretion to determine whether a Type C or D permit or a facilities lease shall be required for any particular use or uses.

(5) Type E – Hauling Loaded Vehicles.

(a) Type E permits are issued for uses of right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way due to hauling large quantities.

(b) Type E permits include, but are not limited to:

(i) Frequent use hauling involving an average of six loaded vehicles per hour during any eight-hour period in one day, for two or more consecutive days.

(ii) Any hazardous waste hauling.

(c) Type E permits may be issued to a general contractor to authorize construction and fill activities by the said general contractor and by subcontractors.

(6) Type F Permits – Facilities Lease or Franchise. A Type F permit (facilities lease or franchise) is issued for use of a right-of-way for a period in excess of 180 continuous days, for those activities that have the potential of altering the appearance of or disturbing the surface or subsurface of the right-of-way or for the location of permanent structures on the right-of-way. Uses requiring a facilities lease or franchise shall include, but are not necessarily limited to the following:

(a) Location of garages, buildings, or other structures within the right-of-way;

(b) Location of telecommunications facilities within the right-of-way;

(c)Location of utility infrastructure within the right-of-way.

The director shall have the discretion to determine whether a franchise will be required rather than a facilities lease. The city council reserves the sole discretion to lease city property and other facilities, and no vested or other right shall be created by this section or any provision of this chapter applicable to such facilities leases. The terms of such facilities leases and franchises, including the fees associated with such lease or franchise, shall be negotiated with the lessee or franchisee on a case-by-case basis.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2009.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Christopher D. Bacha
Kenyon Disend, PLLC

Interim City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

CITY OF BURIEN SPECIAL EVENT PERMIT
RULES AND REGULATIONS
PROMULGATED BY THE CITY MANAGER

DATED THIS ** DAY OF ****, 2009

The following rules and regulations apply to all applications for a Special Events Permit pursuant to Chapter 12.15 of the Burien Municipal Code (the “Special Events Code”) and to all special events as defined therein.

A. DELEGATION OF AUTHORITY: The City Clerk, and in the absence of the City Clerk, the Human Resources Director, and their designees, shall have responsibility for accepting applications for special events permits, processing, issuing or denying such permits, and implementing these rules and regulations.

B. SPECIAL EVENTS PERMIT APPLICATIONS: The City Clerk shall prepare a special events permit application form in conformance with the requirements of the Special Events Permit Code and these rules and regulations. The application code shall require the following information:

(1) The name, address, and telephone number of the applicant and the event organizer if different than the applicant.

(2) A certification that the applicant will be financially responsible for any City fees or costs that may be imposed for the special event.

(3) The name, address, and telephone number of the event organizer, if any, and the chief officer of the event organizer, if any.

(4) If the special event is designed to be held by, on behalf of, or for any organization other than the applicant, the applicant for the special event permit shall file a written communication from such organization:

(a) Authorizing the applicant to apply for the special event permit on its behalf; and

(b) Certifying that the applicant will be financially responsible for any costs or fees that may be imposed for the special event.

(5) A copy of the tax exemption letter issued for any applicant claiming to be a tax-exempt nonprofit organization;

- (6) A statement of the purpose of the special event;
- (7) A statement of fees to be charged for the special event;
- (8) The proposed location for the special event;
- (9) Dates and times when the special event is to be conducted;
- (10) The approximate times when assembly for, and disbanding of, the special event is to take place;
- (11) The proposed locations of the assembly or production area;
- (12) The specific proposed site or route, including a map and written narrative of the route;
- (13) The proposed site of any viewing stands;
- (14) The proposed site for any disbanding area;
- (15) Proposed alternate routes, sites or times, where applicable;
- (16) The approximate number of persons, animals or vehicles that will constitute the special event;
- (17) The kinds of animals anticipated to be part of the special event;
- (18) A description of the types of vehicles to be used in the special event;
- (19) The number of bands or other musical units and the nature of any equipment to be used to produce sounds or noise;
- (20) The number and location of portable sanitation facilities;
- (21) Other equipment or services necessary to conduct the special event with due regard for participant and public health and safety;
- (22) The number of persons proposed or required to monitor or facilitate the special event and provide spectator or participant control and direction for special events using City right-of-way, sidewalks, or facilities;
- (23) Provisions for first aid or emergency medical services, or both, based on special event risk factors;
- (24) Insurance and surety bond information;
- (25) Any special or unusual requirements that may be imposed or created by virtue of the proposed special event activity; and,
- (26) Any other information required by the City that reasonably relates to the special event.

C. ACCEPTANCE AND REVIEW. Applications for special events permits shall be submitted to the City Clerk or the Department of Community Development at City Hall, or electronically through an electronic application made available on the City's website, and upon receipt shall be logged into the City and assigned a permit application number. All applications shall be routed to the City Clerk for initial review. The City Clerk, upon initial review shall determine if the application is complete or requires additional information from the applicant. In making such determination, the City Clerk may route the application to affected departments and other governmental entities to determine if the application is complete and further to determine what additional information may be necessary and what conditions may be required for issuance of the special events permit. Such review may include, but is not limited to, review by the City police department and other impacted law enforcement agencies, applicable fire districts, the Seattle-King County health department, the Community Development Department, the public works department, and the City Attorney.

D. CONDITIONS AFFECTING THE ISSUANCE OF A SPECIAL EVENT PERMIT.

(1) Upon review of the completed application, the City Clerk may issue a special event permit when, all of the conditions below (a-h) are met; the event organizer has not requested City services, equipment, or personnel; and the City Clerk, in consultation with other affected departments, has determined that the special event does not require City services, equipment, or personnel.

(a) The special event will not substantially interrupt public transportation or other vehicular and pedestrian traffic in the area of its route.

(b) The special event will not cause an un-resolvable conflict with construction or development in the public right-of-way or at a public park or public facility.

(c) The special event will not block traffic lanes or close right-of-way during peak commuter hours on weekdays between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on right-of-way designated as arterials by the City's Public Works Department.

(d) The special event will not require the diversion of police employees from their normal duties.

(e) The concentration of persons, animals or vehicles will not unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the right-of-way.

(f) The special event will move from its assembly location to its disbanding location expeditiously and without stopping enroute.

(g) The special event will not substantially interfere with any other special event for which a permit has already been granted or with the provision of City services in support of other scheduled special events or unscheduled governmental functions.

(h) The special event will not have significant adverse impact upon residential or business access and traffic circulation in the same general venue.

(2) In order to ensure that the conditions in 11 (1) are met, the City Clerk may place conditions on the special event permit.

E. REASONS FOR DENIAL OF A SPECIAL EVENT PERMIT.

- (1) The City Clerk may deny a special event permit to an applicant who has not:
 - (a) Provided for the services of a sufficient number of trained and certified traffic controllers; or
 - (b) Provided sufficient monitors for crowd control and safety; or
 - (c) Provided sufficient safety, health, or sanitation equipment services, or facilities that are reasonably necessary to ensure that the special event will be conducted with due regard for health and safety; or
 - (d) Provided sufficient off-site parking or shuttle service, or both, when required, to minimize any substantial adverse impacts on general parking and traffic circulation in the vicinity of the special event; or
 - (e) Met all of the requirements for submitting an application for a special event permit.
- (2) The City Clerk may deny a special event permit if the City Clerk determines that:
 - (a) The special event will create the imminent possibility of violent disorderly conduct likely to endanger public safety or to result in significant property damage; or
 - (b) The special event will violate public health or safety laws; or
 - (c) The special event fails to conform to the requirements of law or duly established City Policy; or
 - (d) The applicant demonstrates an inability or unwillingness to conduct a special event pursuant to the terms and conditions of this chapter; or
 - (e) The applicant has failed to conduct a previously authorized or exempted special event in accordance with law or the terms of a permit, or both; or
 - (f) The applicant has not obtained the approval of any other public agency within whose jurisdiction the special event or portion thereof will occur; or
 - (g) The applicant has failed to provide an adequate first aid or emergency medical services plan based on special event risk factors.
- (3) The City Clerk may deny a special event permit to an applicant who has failed to comply with any require of Chapter 12.15 BMC or with any condition of a special event permit previously issued to the applicant.

F. CONTENTS OF SPECIAL EVENT PERMIT.

A special event permit may contain the following information or conditions:

(1) The location of the special event venue, which may be identified by a map attached to the special event permit;

(2) The date, assembly area, time for assembly, and starting time of the special event;

(3) The specific route plan to the special event;

(4) The minimum and maximum speeds of the special event;

(5) The number and types of persons, animals, and vehicles; the number of bands, other musical units, and equipment capable of producing sound, if any; and limitations thereon pertaining to noise abatement;

(6) The maximum interval of space to be maintained between booths or other structures to be used for the special event;

(7) The portion of the street and sidewalk that is to be occupied by the special event;

(8) The location of reviewing or audience stands, if any;

(9) The number and location of traffic controllers, monitors, other support personnel and equipment, and barricades to be furnished by the special event organizer;

(10) The area and time for disbanding;

(11) The conditions or restrictions on the use of alcoholic beverages and authorization for and conditions of the exclusive control or regulation of vendors and related sales activity by the event organizer during the special event;

(12) The provisions for any required emergency medical services;

(13) Such other information and conditions as are reasonably necessary for the conduct of the special event and the enforcement of Chapter 12.15 BMC, including the requirement for the on-site presence of the event organizer or its designated representative for all special event coordination and management purposes.

(14) As a condition of the issuance of a special event permit, the applicant shall be required to make adequate provisions for cleaning the area or route of the special event both during and upon completion of the special event and to return the area or route to the same condition of material preservation and cleanliness as existed prior to the special event.

G. INSURANCE REQUIREMENTS.

A. Comprehensive General Liability Insurance. The event organizer of a special event must possess or obtain comprehensive general liability insurance to protect the City against loss from liability imposed by law for damages on account of bodily injury and property damage arising from the special event. Such insurance shall name the City of Burien, its officers, employees, and agents, and, as required, any other public entity involved in the special event, as an additional insured. Insurance coverage must

be maintained for the duration of the special event. Notice of cancellation shall be provided immediately to the City.

Comprehensive general liability insurance coverage shall be in a combined single limit of at least \$1,000,000. If the special event is of a demonstrated high- or low-risk category, according to recognized insurance and risk management standards, the City's Risk Manager may authorize a greater or lesser amount of coverage or may require a particular type of insurance coverage different from that specified herein.

The required Comprehensive general liability insurance coverage shall encompass all liability insurance requirements imposed for other permits required under other sections of Chapter 12.15 BMC and is to be provided for the benefit of the City and not as a duty, express or implied, to provide insurance protection for spectators or participants.

The event organizer's current effective insurance policy, or copy, along with necessary endorsements, shall be filed with the City Clerk at least 30 calendar days before the special event, unless the City Clerk for good cause modifies the filing requirements.

B. Waiver Of Insurance Requirements.

Except for Special Events where the sale of alcoholic beverages is authorized or for traffic control permits issued in conjunction with a Special Event, the insurance requirements of Section A above may be waived by the City Manager. In making the determination of whether to waive insurance, the City Manager shall consider the following factors:

- (a) Whether it is an expressive activity special event;
- (b) Whether it is objectively impossible to obtain insurance coverage;
- (c) Whether the special event will involve the use of equipment (other than sound equipment), vehicles, animals, fireworks, or pyrotechnics;
- (d) Whether a fee or donation is charged or required as a condition of admission or participation in the special event; or
- (e) Whether other factors exist that provide a reasonable basis for waiving the insurance requirements.

To claim that it is objectively impossible to obtain insurance coverage pursuant to Section 18 (1)(a), the applicant shall submit a statement from at least two independent licensed insurance brokers demonstrating the insurance is unavailable in the market place.

Even though insurance is waived, the City may require the event organizer of a special event to defend, indemnify, and hold harmless the City from any claim or liability arising from the special event.