

GENERAL INFORMATION

Applicant: City of Bloomington

Request: Consider an ordinance to:

- Remove standards requiring interim use permits for entertainment and recreation special events held in the CO-2 and CX-2 zoning districts.
- Update City Code to allow special events in all zoning districts and establishing time limits for public assemblies.

CHRONOLOGY

Planning Commission Agenda: 1/7/16 – Study session discussion of special events update ordinance

City Council Memorandum: 1/22/16 – City Council received a memorandum on the special events update ordinance via the City Manager’s Information process

Planning Commission Agenda: 2/11/16 – Public hearing

Purpose and Background of Proposed Ordinance

The first phase of the proposed special events ordinance update addresses two policy issues:

- Streamlining review of special events to improve efficiency and eliminate redundant review.
- Updating City code to match City practice and classifying special events as permitted uses in all zoning districts.

Currently, special events held in the CO-2 and CX-2 zoning districts are required to obtain an interim use permit (IUP) as well as obtain the typical permits required for a special event held in any other zoning district. The additional IUP process in these districts leads to redundant work. The proposed ordinance deletes the IUP requirement to address this issue. The proposed ordinance also cleans up existing code language to explicitly list and allow special events as permitted uses in all zoning districts. Descriptions of the City’s current special event permitting processes are provided below.

A second phase of the update in 2016 will evaluate how best to address sales oriented events such as art fairs and craft fairs relative to transient merchant sales. The ordinance has been

divided into two phases so that removal of the IUP requirement will take place prior to commencement of the Mall of America’s event series.

Public Assembly permits

Organizers who hold special events like races, parades, or large gatherings on public or private property within the City of Bloomington must obtain a Public Assembly permit from the City’s licensing department prior to hosting an event. As shown in Table 1, gatherings of 50 people or more on public property or outside gatherings of 200 people or more on private property require a Public Assembly permit. However, it should be noted that some events that meet these thresholds are exempted from obtaining a Public Assembly permit, including:

- City sponsored events
- Demonstrations occurring within five days of the event being protested
- Religious organizations conducting worship services on private property

The current fee for a Public Assembly permit is \$25 per day for the length of the event. Also, event organizers are required to sign a contract and put down a deposit with the City to obtain a Public Assembly permit if:

- The event will be held on City property,
- The event will hire City police officers or other City employees, or,
- If there is potential that the City would have to clean up after the event.

The contract outlines the fees the organizer must pay for the use of police and other City employees as well as any fees the City will charge if City cleanup crews are needed after an event. Please see the attached documents for a full copy of the Public Assemblies ordinance from Chapter 14 of the City Code as well as an example event contract.

Table 1: Types of Public Assemblies that Require Permits

Type of Assembly	Defining Event Characteristics
Public Assembly	<ul style="list-style-type: none">• On public property or traveling in the public right of way• > 50 people
Private special event	<ul style="list-style-type: none">• Held outside• On private property• > 200 people

Public Assembly Permit Process:

The Deputy City Clerk, Doug Junker, is the point person for Public Assembly permits within the City. The Deputy City Clerk is responsible for walking an applicant through the Public Assembly permit process and works with the applicant to ensure all other required materials (i.e. right-of-way, tent, alcohol permits, etc.), and other paperwork are submitted correctly and reviewed on time by staff from various departments. The Deputy City Clerk also helps event organizers refine their plans to facilitate the approval of their proposed events.

Event organizers are asked to attend a special event committee meeting to discuss the plans for the proposed event. The Special Events Committee is made up of up of 12 staff members from multiple departments, including Public Works, Police, Planning, Environmental Health, Parks and Recreation, Building and Inspection, and others. At this meeting staff members give the event organizer feedback and suggest any necessary changes to the proposed event to ensure compliance with city code. This process was put in place in 2008 when the public assembly ordinance was last reviewed and has been working well since then.

Approval or Denial of a Public Assembly Permit:

Public Assembly permits are reviewed administratively to assess the event's likely impact on the public health, safety, and welfare. For example, the permit is reviewed to ensure that the event:

- Does not interrupt the safe and orderly movement of pedestrians and vehicles
- Does not interfere with the movement of firefighting equipment
- Does not require the diversion of so great a number of City police resources as to pose an adverse impact on public safety
- Is not likely to cause injury to persons or property
- Plans for adequate sanitation
- Has sufficient parking

If the application does not adhere to these requirements the City has the ability to reject the application.

Interim Use Permits for Special Events in CO-2 and CX-2 zoning districts

Chapter 19 and 21 of the City code require that special events held in the CO-2 and CX-2 zoning districts must obtain an Interim Use Permit (IUP) as well as a Public Assembly permit if thresholds are met. The IUP must be reviewed and acted upon by the Planning Commission. Currently, Phase I, II and III of the Mall of America/IKEA are the only locations within the City that are zoned CO-2 or CX-2. The Mall of America has obtained special event series IUPs for many years.

When the Mall of America first opened it was holding many special events every year. The IUP process was meant to streamline the special event approval process by approving the events in one group instead of approving each one separately. However, this process has not worked well in practice. The special event series IUP is specific to a calendar year, so when the Mall of America applies for an IUP early in the year they often do not know the details of the events they would like to hold later in the year. This means that the Mall of America's special event IUP often gets approved with placeholder events. These events get fleshed out later in the year when they apply for their required Public Assembly permit.

The application fee for the IUP is \$220 and is in addition to other permit fees (i.e. Public Assembly, tents, food, etc.) needed for specific events.

Policy Issue 1: Redundancy in the Code

The Chapter 19 and Chapter 21 standards requiring IUPs for special events held in the CO-2 and CX-2 zoning districts are redundant to the Public Assembly permit requirements in Chapter 14. This redundancy forces event organizers, City staff, and the Planning Commission to perform duplicative administrative tasks for events planned at the Mall of America. This is the only area of the City that has extra requirements for special events – all other areas of the City are only governed by the Public Assembly process; a process staff believes is working well.

The proposed ordinance removes the IUP requirements for special events in CO-2 and CX-2 zoning districts. This change would mean special events at the Mall of America would be treated exactly the same as all other special events in the City are currently treated.

The requirements of the IUP process and the Public Assembly permit process are very similar. However, there are some differences between the two sets of requirements, as summarized in Table 2. The shaded rows highlight where there are differences between the two processes. Legal, Planning, and staff from the City Clerk’s Office reviewed the differences and discussed if the Public Assembly standards should be changed in anyway if the IUP requirements are deleted.

Staff proposals on these issues are discussed below.

Table 2: CO-2 and CX-2 Event Requirements versus Public Assembly Permit Requirements

CO-2 and CX-2 Event Requirements (Chapter 19/21)	Public Assembly Permit Requirements (Chapter 14)
<ul style="list-style-type: none"> • Must submit the following: <ul style="list-style-type: none"> ○ Event site layout showing fire and emergency vehicle access ○ Parking, pedestrian, and traffic directional plan ○ Security Plan ○ Waste management and recycling plan ○ Sign plan ○ Plans for disabled parking and disabled toilet access 	<ul style="list-style-type: none"> • Public Assembly permit requires all of these plans and layouts
<ul style="list-style-type: none"> • Must obtain all other applicable permits and licenses. Typical permits include: <ul style="list-style-type: none"> ○ Alcohol ○ Tent and/or other temporary structures ○ Food service 	<ul style="list-style-type: none"> • Public Assembly permit also requires all applicable permits
<ul style="list-style-type: none"> • Minimum filing period is 20 days before the event 	<ul style="list-style-type: none"> • Minimum filing period varies between four and seven days before an event, depending on the event type • Suggested minimum filing period of 60 days prior to an event

<ul style="list-style-type: none"> • Provide notice to neighbors within 500 feet of the event at least ten days prior to the event 	<ul style="list-style-type: none"> • Provide notice to neighbors within 500 feet of the event at least 48 hours prior to the event
<ul style="list-style-type: none"> • Events must not be longer than 45 days. Council may approve longer events. 	<ul style="list-style-type: none"> • Public Assembly permit requirements do not regulate the length of an event
<ul style="list-style-type: none"> • Must restore site within 36 hours of the end of the event 	<ul style="list-style-type: none"> • Must restore the site within 24 hours of the conclusion of an event (required via mandatory contract)
<ul style="list-style-type: none"> • Requires adequate insurance via an executed special event series agreement. 	<ul style="list-style-type: none"> • Requires adequate insurance via mandatory contract
<ul style="list-style-type: none"> • Must not violate the city's noise ordinance 	<ul style="list-style-type: none"> • Must not violate the city's noise ordinance
<ul style="list-style-type: none"> • Level of review: Planning Commission 	<ul style="list-style-type: none"> • Level of review: Administrative

Minimum Filing Periods:

The minimum filing period for a Public Assembly permit is much shorter than the minimum filing period for a CO-2 and CX-2 zoning districts special event IUP. The shorter minimum filing periods for Public Assemblies were put in place to protect citizens' right to freedom of expression. Nationally, there have been many legal cases challenging minimum filing periods for Public Assembly permits. Table 3 below summarizes the courts findings in various cases.

Table 3: Minimum Filing Periods Found Valid and Invalid by the U.S. Court System

Valid Time Frames	Invalid Time Frames
<ul style="list-style-type: none"> • A minimum of four and maximum of 11 days¹, by 4:00 p.m. the preceding day² • 72 hours in advance of the event³ 	<ul style="list-style-type: none"> • 30 days for parade, 10 days for block party and 3 days for filming activities⁴ • 20 day application⁵, • 5 days notice for gathering as small as 10 people,⁶ • 1 hour⁷ • 30 days⁸ • 5 days⁹

As shown in the summary table, there is clearly no bright line for how many days in advance a permit needs to be filed, however based on legal research staff recommends maintaining the four to seven day minimum filing periods and removing the filing period associated with the IUP.

¹ Handley v. City of Montgomery, 401 So. 2d 171 (Ala. Crim. App 1981), writ denied 401 So. 2d 185 (Ala. 1981).
² Jackson v. Dobbs, 442 F. 2d 928 (5th Cir. 1971).
³ Progressive Labor Party v. Lloyd, 487 F. Supp. 1054 (D. Mass 1980).
⁴ Long Beach Lesbian & Gay Pride Inc. v. City of Long Beach, 17 Cal. Rptr. 2d 861 (2d. Dist. 1993).
⁵ N.A.A.C.P. Western Region v. City of Richmond, 743 F.2d 1346 (9th Cir. 1984).
⁶ Douglas v. Brownell, 88 F.3d. 1511 (8th Circuit 1996).
⁷ Robinson v. Coopwood, 292 F. Supp 926 (N.D. Miss. 1968).
⁸ York v. City of Danville, 152 S.E.2d 259 (1967).
⁹ Hurwitz v. Boyle, 284 A. 2d 190 (App. Div 1971).

It should be noted that based on past experience, the four to seven day minimum filing period has not been an issue for events held outside the CO-2 and CX-2 districts. Special event applicants generally submit their applications in advance of the minimum filing deadline; the large majority of applicants comply with the suggested minimum filing period of 60 days prior to an event. In the recent past, only one event has applied within the minimum filing period. Furthermore, if a proposed event is interested in serving alcohol, the minimum filing period automatically increases to 60 days – the minimum filing period required for a temporary alcohol license.

Policy Proposal: Based on staff’s legal research, staff is proposing to maintain the four to seven day minimum filing periods, and the 60 day suggested minimum filing period, for Public Assembly permits and remove the filing period associated with the special event IUP process. Thus, events held in the CO-2 and CX-2 districts meeting the definition of Public Assembly would be subject to the same filing period as assemblies held throughout the City.

Notice to Neighbors:

Requirements for providing notice to neighbors are tied to minimum filing periods; meaning it is impossible to require an event organizer to notice neighbors 20 days prior to an event if the minimum filing period is seven days. Therefore, based on the legal research discussed above, staff recommends maintaining the Public Assembly permit requirement to notice neighbors within 500 feet of the event at least 48 hours prior to the event, and recommends removing the requirement to provide notice 20 days prior to an event held in the CO-2 and CX-2 zoning districts.

Again, it should be noted that the large majority of events held within the City provide notice to neighbors well in advance of 48 hour minimum deadline. It has been the City’s experience that notice is typically given to neighbors one to two weeks in advance of an event.

Policy Proposal: Maintain the 48 hour notice to neighbors standard via the Public Assembly permit process and remove the 20 day notice standard associated with a special event IUP.

Level of Review:

Similarly, the ability to require Planning Commission or City Council review of a special event application is also tied to minimum filing periods. With the current four to seven day minimum turnaround time required by the Public Assembly standards it would be impossible to require Planning Commission or City Council review of a Public Assembly permit, because Commission and Council meeting materials are due multiple weeks in advance. In practice, larger events are reviewed by the Events Committee to ensure compliance with Public Assembly standards. Many of the larger events held at MOA in the past were reviewed by the Events Committee.

Therefore, staff are proposing removing the Planning Commission review of special events in the CO-2 and CX-2 zoning district and proposing keeping the current administrative review of Public Assembly permits, which would apply to assemblies in CO-2 and CX-2. It should be noted that under the current Public Assembly permit process (see Section 14.65(a) of the

attached code excerpt), staff have the ability to reject special event applications that have a negative effect on the public health, safety, and welfare. Furthermore, special events organizers that are seeking a temporary alcohol license as part of a special event must gain City Council approval through separate licensing standards.

Policy Proposal: Maintaining an administrative level of review for Public Assembly permits and removing the Planning Commission review of CO-2 and CX-2 special event IUPs.

Length of an Event:

The IUP standards limit special events in the CO-2 and CX-2 districts to 45 days. City Council approval is required if an event organizer is interested in having an event that lasts longer than 45 days. There is currently no limit placed on the duration of an event within the Public Assembly permit standards, however other permits typically associated with a special event do have duration limits. For example, a temporary food license is restricted to 21 days while a temporary liquor license is limited to four consecutive days and no more than 60 days in one location.

Staff is proposing changing the Public Assembly standards to limit special events to 45 days in length, but including a provision allowing the City Council the ability to approve longer events. This change was supported by the Planning Commission when the proposed ordinance was presented at a study session.

Policy Proposal: Change the Public Assembly standards to limit special events to 45 days in length, but allow the City Council the ability to approve longer events.

Site Restoration:

The Public Assembly permit, via the contract required by code, requires event organizers to completely restore a site (i.e. pick up all trash, remove temporary signs, tents, etc.) within 24 hours of an event while the IUP process allows up to 36 hours for complete site restoration. Staff recommends maintaining the 24 hour requirement via the City's standard event contract. Based on past experience, 24-hours is adequate time for site restoration.

Policy Proposal: Maintain the 24 site restoration requirement in the Public Assembly Standards and remove the 36 hour standards associated with the IUP requirements.

Policy Issue 2: Allow Special Events in all Zoning Districts

In the past, City land use standards did not treat special events as 'uses.' Therefore, in the older sections of the code located in Chapter 19, the code is mostly silent on the issue of special events. In the newer sections of the code in Chapter 21 the code allows special events as accessory uses in neighborhood and freeway commercial zoning districts. Despite this silence, in practice the City has historically allowed special events in all zoning districts. As part of the Public Assembly permit process, staff works with organizers to minimize potential negative effects on neighboring properties. For example, staff have worked with race organizers to adjust race routes, so they do not block residents' only access into their neighborhood.

The proposed ordinance cleans up the older code sections to specifically list and allow special events in all zoning districts, so the code matches how events are dealt with in practice. Staff is also recommending allowing all special events as permitted uses instead of accessory uses. Labeling special events as accessory would make for difficult enforcement, because by definition accessory uses must not occupy more than 25 percent of the total floor area on a site. This is not an applicable standard for a special event use that may use the entirety of the site but only for a short period of time.

Policy proposal: Change the code to reflect City practice and allow special events in all zoning districts as permitted uses, subject to other applicable code standards (e.g., Public Assembly standards, tent standards, licensing standards, etc.).

Policy Proposals Summarized

Policy Issue 1: Redundancy in the code

- Remove the IUP standards for special events in the CO-2 and CX-2 zoning districts.
- Maintain the following Public Assembly Standards:
 - Minimum filing periods (four to seven days depending on the event)
 - Notice to neighboring property owners (48 hours in advance)
 - Level of review (administrative)
 - Site restoration (24 hours)
- Limit Public Assemblies to 45 days, but allow the City Council to approve longer events.

Policy Issue 2: Allow special events in all zoning districts

- Change the code to reflect City practice and allow special events in all zoning districts as permitted uses.

Public Outreach

Notice of the public hearing on the proposed amendments to the City Code was published in the Sun Current, the official newspaper. Notice will also be sent via e-mail to registered users of the “Zoning Ordinance Updates” and “Planning Commission” e-subscribe groups. Lastly, the proposed amendments and supporting information contained in the staff report will be posted on the City website.

Recommendation

Staff recommends the following motion:

In Case PL201600003, I move to recommend approval of the Ordinance as attached to the staff report to amend Chapters 14, 19, and 21 of the City Code.

Report to the Planning Commission
Planning Division/Engineering Division

02/11/2016