

ORDINANCE NO. 2867-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 9.45 (SPECIAL EVENT PERMITS) AND CHAPTER 9.47 (EXTRAORDINARY PUBLIC SAFETY SERVICE LIABILITY) TO TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE PERTAINING TO SPECIAL EVENTS

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

SECTION 1. CHAPTER 9.45 ADDED. Chapter 9.45 (Special Event Permits) is hereby added to Title 9 (Extraordinary Public Safety Service Liability) of the Sunnyvale Municipal Code to read as follows:

**Chapter 9.45
SPECIAL EVENT PERMITS**

- 9.45.010. Findings.**
- 9.45.020. Administration; Administrative Guidelines.**
- 9.45.030. Definitions.**
- 9.45.040. Permit Required.**
- 9.45.050. Permit procedure.**
- 9.45.060. Determination – Grounds for approval or denial.**
- 9.45.070. Permit Fees.**
- 9.45.080. Excessive Public Safety Response Costs.**
- 9.45.090. Appeal.**
- 9.45.100. Penalty.**
- 9.45.110. Regulations nonexclusive.**
- 9.45.120. Severability.**

9.45.010. Findings.

(a) The City Council finds that special events such as parades, fairs, carnivals, block parties, festivals, public dances, shows, and concerts, are an important part of the life of a healthy and vibrant community. Such events, however, may have a negative effect on surrounding residents and businesses if the person or organization sponsoring the event fails to take appropriate measures for security, traffic control, crowd control, parking, waste management and other impacts. At times, poor planning by event organizers has resulted in circumstances requiring an extraordinary public safety response for the immediate protection of public health and welfare. Such incidents result in unanticipated costs, divert critical city resources, and may leave other areas of the city with inadequate public safety protection during the event.

(b) The purpose and intent of this chapter is to ensure that the city receives adequate notice of special events that are likely to result in a need for

extraordinary public safety services or other city services and to establish standards for the issuance of a permit for such events. This chapter is further intended to create a mechanism for cost recovery for events which result in a need for city services.

(c) It is also the intent of the City Council to protect the rights of its citizens to engage in protected free speech expression activities. Consequently, it is not the intent of this ordinance to regulate 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 which are protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution.

9.45.020. Administration; Administrative Guidelines.

(a) This chapter shall be administered by the Office of the City Manager, who shall appoint a Special Events Coordinator to oversee the implementation of this chapter. The Special Events Coordinator or designee shall process permit applications; transmit applications to other affected city departments for review and approval; notify applicants of any conditions of approval, including any associated city permits that may be required for the event; work with applicants to implement the conditions of approval; coordinate any city services to be provided at the event; and collect any required fees.

(b) The Special Events Coordinator, with the approval of the City Manager, shall develop administrative guidelines consistent with the provisions of this chapter.

9.45.030. Definitions.

(a) “Free Speech Event” means an event at which the expression of free speech rights is the principal purpose of the event. “Free speech rights” means expressive activity protected by the First Amendment of the United States Constitution or Article 1, Section 2 of the California Constitution.

(b) “Special Event” means any of the following activities:

(1) An event that will require the closure of a public street, or a portion thereof, to vehicular traffic, such as a parade, block party or street fair.

(2) An event that requires a miscellaneous plan permit for a temporary unenclosed use under Chapter 19.82 of this code, such as a festival, carnival, amusement ride, arts and crafts show, car wash, or flea market, unless excluded by the administrative guidelines adopted pursuant to this chapter.

(3) An event that is open to the public and advertised in advance that is reasonably expected to draw a crowd in excess of the permitted occupancy load of the building where the event will occur. Reasonable expectation may be shown by evidence that the person or entity organizing, sponsoring, or promoting the event has organized, sponsored, or promoted past similar events, either in Sunnyvale or elsewhere, that have required a public safety response in order to control crowds or traffic generated by the event. Reasonable expectation may also be shown by evidence that a reasonably prudent event organizer would anticipate that the event is likely to attract a crowd beyond the capacity of the facility to accommodate. This section does not apply to an event held at an

entertainment establishment such as a bar, nightclub, restaurant, or theater as long as the event is authorized by and consistent with existing use permits and licenses governing the establishment, unless the establishment is required to obtain special event permits as part of an approved security plan under Chapter 9.47 of this Code.

(c) Exclusions. The following activities shall not be considered special events that require a special event permit:

- (1) An event sponsored by the city of Sunnyvale.
- (2) An event that is conducted pursuant to a contract with the city of Sunnyvale.
- (3) An event held at a public park where the Director of Parks and Recreation has issued a permit for exclusive use under Chapter 9.62 this Code.
- (4) An event held at a city facility pursuant to a facility rental agreement.
- (5) An event excluded by the administrative guidelines adopted pursuant to this chapter; however, such event may still be subject to other city permit requirements.
- (6) Funeral processions by a licensed mortuary.

9.45.040. Permit Required.

(a) It shall be unlawful for:

- (1) Any person, group, organization or entity to sponsor or conduct a special event, as defined in this chapter, unless such special event permit as may be required under this chapter has been issued for the special event;
- (2) Any person, group, organization or entity to participate in any special event as defined in this chapter with the knowledge that the sponsor of the special event has not been issued the required permit;
- (3) The permittee or event sponsor to willfully violate the terms and conditions of the permit, or for any event participant, with the knowledge thereof, to willfully violate the terms and conditions of the permit.

(b) The procedures or requirements of this chapter shall not affect or supersede the provisions of law or the requirements for the issuance of fireworks, structural, electrical or other permits by city departments prescribed elsewhere in this code, when such permits are otherwise required because of a particular condition or requirement of the special event.

9.45.050. Permit procedure.

(a) Filing. Any person intending to conduct or sponsor a special event (as defined herein) shall first obtain a special event permit by filing an application on a form provided by the Special Events Coordinator.

(b) Contents of Application.

In addition to any other information that may be required in the application pursuant to administrative guidelines adopted by Special Events Coordinator, the application shall contain the following information:

(1) Name, address and telephone number of the person, entity or organization sponsoring or conducting the proposed event.

(2) Date, time, and location of the proposed event including time for set-up and tear-down.

(3) A description of all tents, pavilions, temporary buildings, machinery, electrical, water supply, liquid and solid waste facilities, plans, amusement equipment and all other temporary structures, illumination, and sound/amplification equipment to be used at the event.

(4) Estimated number of people expected to attend the event.

(5) Plans for traffic control, parking, street closure, storm water control (to prevent litter and trash from entering the storm drains), trash removal, signs, toilets, and security of the event.

(6) Signed statement of consent from any third party whose property will be used for parking or other purposes related to the event.

(7) A certificate of insurance, stating the insurer's name, policy terms, and principal amounts of a policy of insurance against general liability, bodily injury, and property damage arising from the event.

(8) Any additional or supplemental information which the Special Events Coordinator determines is reasonably necessary to determine whether to approve or conditionally approve a special event permit application pursuant to the provisions of this chapter.

(c) Timing.

(1) For all events other than free speech events, the application shall be filed in accordance with time limits established by the Special Events Coordinator.

(2) Free speech events. If the expression of free speech rights is the principal purpose of the event, the applicant should file the application as soon as possible but no less than 48 hours prior to the event. If an application for a free speech event is filed less than five working days prior to the event, the applicant waives any right to appeal the decision of the Special Events Coordinator. If the city denies a permit for a free speech event and the applicant wishes to seek judicial review, he or she is entitled to expedited judicial review under Code of Civil Procedure section 1094.8.

(d) Decision. The Special Events Coordinator shall approve the permit application, subject to conditions, or shall deny the permit for any of the grounds set forth in Section 9.45.060. The Special Events Coordinator shall notify the applicant in writing of the decision, including a statement of the reasons for any conditions or the grounds for a denial. If a change in the time or location of the proposed event would allow approval of the application, the Special Events Coordinator shall propose an alternative to the applicant.

(e) Conditions. Conditions attached to the permit shall be those required to reasonably assure the protection of the public health, the safety of persons, the property of local residents and persons attending the event. Conditions may include, but are not limited to, liability insurance naming the City of Sunnyvale as an additional insured, emergency medical services, private security at applicant's expense, and reimbursement to the City of Sunnyvale for city public safety officers and/or other city services. The number and type of security required shall be determined by the Director of Public Safety or designee.

(f) Indemnification. The permittee shall be responsible for all liability imposed by law for personal injury or property damage caused by the event. If any claim of such liability is made against the city, its officers or employees, the permittee shall defend, indemnify and hold them, and each of them, harmless from such claim insofar as permitted by law.

(g) Acceptance of conditions. The applicant shall sign a statement accepting the conditions of the permit on a form provided by the Special Events Coordinator and shall return such acceptance to the Special Events Coordinator. The failure to submit a timely acceptance of the conditions will be deemed an automatic withdrawal of the application.

(h) Issuance of Permit. The permit shall be deemed issued when the Special Events Coordinator receives the applicant's written acceptance of the conditions, the applicant has paid all required fees, and the applicant has obtained any associated permits required as a condition of the Special Event Permit.

(i) Appeal. The applicant may appeal a decision of the Special Events Coordinator as provided in Section 9.45.090 of this Chapter.

9.45.060. Determination – Grounds for approval or denial.

(a) Approval and issuance. The Special Events Coordinator shall approve the application if it is complete and there are no grounds for denial under subsection (b) of this section. Such an application is approved subject to all the applicable conditions which the Special Events Coordinator determines to be necessary to protect the public health, safety, and welfare, and to control pedestrian and vehicular traffic in and around the site of the event.

(b) Grounds for denial. The Special Events Coordinator shall deny an application if any one of the following factors is not adequately addressed, and reasonable conditions cannot satisfy the public health, safety or welfare concerns:

(1) The applicant has failed to complete the application or failed to provide supplemental application information requested by the Special Events Coordinator.

(2) The information contained in the application (including supplemental application information) is found to be false in any material respect.

(3) The application does not satisfy the requirements of this chapter or the administrative guidelines adopted pursuant to this chapter.

(4) An application for another event to be held on the same date as that requested has been previously filed or approved, and the other event is so close in time and location to the event proposed as to cause undue traffic congestion or to place the City in a position of being unable to meet the needs for public safety and other City services for both events.

(5) The time, route, or size of the event will substantially interrupt the safe and orderly movement of traffic contiguous to the site or route of the event, or disrupt the use of a street at its peak traffic time.

(6) The concentration of persons, animals or vehicles at the site of the event, or at the site of an assembly or disbanding area around the event, will prevent police, fire or ambulance services reaching areas contiguous to the event.

(7) The size of the event will require the diversion of so many City public safety officers that public safety protection to the rest of the City will be seriously jeopardized.

(8) Given the size and nature of the event, the reasonably available number of City public safety officers and other personnel is not sufficient to ensure the safety of participants or the attending public.

(9) The location of the event will substantially interfere with construction or maintenance work previously scheduled to take place on or along the public right-of-way to be occupied by the event.

(10) The event will occur at a time when a school is in session and along a route or at a location adjacent to the school or a class thereof, and the noise created by the activities of the event will substantially disrupt the educational activity of the school or class.

(11) The application was submitted so close in time to the scheduled event that there is insufficient time to investigate and process the application.

(12) The applicant refuses to indicate in writing that he or she will comply with all terms and conditions of the permit.

(13) The applicant has previously violated permit conditions related to a special event in the City of Sunnyvale or elsewhere and it is reasonably believed that similar violations or unlawful conduct will again occur.

(14) The proposed activity is prohibited by law.

(15) The applicant fails to comply with any conditions of approval including, but not limited to, payment of fees; submittal of an indemnification agreement and/or proof of insurance to the extent required; or timely receipt of all required approvals.

9.45.070. Permit Fees. Permit application fees and other additional fees and charges shall be established by city council resolution. Fees and charges may include, but are not limited to, cost of city personnel and equipment involved in permit processing, event traffic control, police and fire safety or other facility or event personnel, based on an approved cost recovery schedule set by the City Council in the fee resolution, or the actual cost of such personnel if not referenced in the resolution.

9.45.080. Excessive Public Safety Response Costs.

(a) In addition to all other civil and criminal remedies provided by law, the City shall be entitled to recover the cost of any excessive public safety response associated with a special event. For purposes of this section, “excessive public safety response” means the dispatch of five or more public safety officers due to a report of a disturbance at the location of the event or reasonably connected with or arising from the event. Excessive public safety response costs also include the cost of any public safety response which is caused by the permittee’s failure to abide by permit conditions. Excessive public safety response costs do not include protection of the attendees of a free speech event from hostile members of the public or counter-demonstrations.

(b) The following persons and entities shall be jointly and severally liable for excessive public safety response costs associated with a special event:

- (1) The holder of a special event permit issued pursuant to this chapter;
- (2) Any person, organization or entity which promoted or sponsored the event;
- (3) The owner of the property where the event was held.

(c) Excessive public safety response costs may be collected in any manner prescribed by law. In addition, any person or entity who has incurred excessive public safety response costs as a result of a special event may be denied a subsequent special event permit until such costs are paid.

9.45.090. Appeal.

(a) The applicant may appeal the denial of a permit or the imposition of a permit condition to the City Manager by filing a written request stating the reasons for the appeal. The City Manager or his or her designee shall hold a hearing no later than two business days after the filing of the appeal, and will render a decision no later than one business day after hearing the appeal. The City Manager or designee may:

- (1) Approve the special event permit as requested or as changed, modified or conditioned.
- (2) Deny the special event permit if the City Manager or designee finds that grounds for denial exist under Section 9.45.060 of this chapter and that there are no reasonable conditions that could be imposed that would protect the public health, safety, and welfare.

(b) For special events which also require a miscellaneous plan permit for a temporary unenclosed use, this section is intended to supersede the appeal process in chapter 19.82 of this code.

9.45.100. Penalty. Every person who violates any provision of this chapter shall be guilty of a misdemeanor, provided that any violation may be charged as an infraction at the discretion of the prosecutor. Each day or portion thereof that such violation continues or reoccurs shall be a new and separate violation.

9.45.110. Regulations nonexclusive. The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the city council.

9.45.120. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 2. CHAPTER 9.47 ADDED. Chapter 9.47 is hereby added to Title 9 (Extraordinary Public Safety Service Liability) of the Sunnyvale Municipal Code to read as follows:

Chapter 9.47
EXTRAORDINARY PUBLIC SAFETY SERVICE LIABILITY

- 9.47.010. Authority and purpose.**
- 9.47.020. Definitions.**
- 9.47.030. Security and safety plan.**
- 9.47.040. Extraordinary police service fee liability.**
- 9.47.050. Payment of fees and penalties.**
- 9.47.060. Appeal.**

9.47.010. Authority and purpose.

This chapter is adopted under the municipal affairs provisions of the city charter for the purpose of establishing standards and controls for the use of emergency public safety service by identifying businesses and property owners and occupants who disproportionately utilize scarce emergency public safety resources at the public expense, often leaving other areas of the city without adequate public safety protection.

9.47.020. Definitions.

The following definitions apply to this chapter:

(a) “Emergency response” means the dispatch of one or more uniformed police officers to a private property pursuant to a request for police assistance for a disturbance at the property. A response to a false alarm under Chapter 9.90 or a domestic violence incident is not an emergency response under this chapter.

(b) “Extraordinary public safety service” means any of the following:

(1) The sixth or subsequent emergency response to the same property within a 12-month period; or

(2) The dispatch of five or more police officers to a single emergency response.

(c) “Occupant” means any individual person or business entity that occupies or controls the property at the time of the emergency response.

(d) “Owner” means any individual person or business entity that has fee title to the property at the time of the emergency response.

9.47.030. Security and safety plan.

(a) Whenever the public safety department first provides extraordinary public safety service to a particular property, the Director of Public Safety may provide the property owner or occupant notice specifying the emergency services provided and requiring the owner or occupant to provide the Director of Public Safety a written plan for improving the security and safety of the property, or the operation of the business. The plan shall also include a method of and commitment to implement the plan. The plan shall be submitted to the Director of Public Safety no later than 14 calendar days after receipt of the notice.

(b) The Director of Public Safety shall review the proposed plan and determine if it adequately addresses the public safety and security issues which have led to the emergency responses. If the Director of Public Safety determines that the plan adequately addresses the public safety and security issues, the Director of Public Safety shall approve the plan, which shall be immediately implemented.

(c) If the Chief of Police determines that the proposed plan does not adequately address the security and safety issues, or if no plan is received, the Chief of Police shall develop a plan to address the security and safety issues. The plan may include any reasonable changes in the design or operation of the property or business, including the requirement for provision of private security at no cost to the City of Sunnyvale. The Chief of Police shall notify the owner or occupant of the plan, and shall specify a reasonable deadline for compliance.

(d) The Director of Public Safety may delegate and assign the responsibilities and duties under this section to other employees of the Department of Public Safety.

9.47.040. Extraordinary police service fee liability.

(a) The failure of an owner or occupant to abide by the plan approved by the Director of Public Safety under Section 9.47.030, shall render the owner and occupants of the property jointly and severally liable for the actual cost of providing the extraordinary public safety service already incurred, or incurred in the future.

(b) The actual cost of the extraordinary public safety service shall be calculated using rates and charges established by the City Council at the time the extraordinary police service is rendered and shall be billed to the owner and occupants of the property.

(c) An owner or occupant shall not be liable under this section if that person was not an owner or occupant of the property during the time the extraordinary police service was rendered.

(d) An owner or occupant who is an individual person and is the victim of a crime shall not be liable for extraordinary police service related to that crime.

(e) Any violation of this chapter is civil, not criminal, and is in addition to any other available remedy provided by law.

9.47.050. Payment of fees and penalties.

(a) All fees and charges levied under section 9.47.040 are due and payable within one calendar month after presentation. For outstanding delinquent payments, a penalty equaling 25 percent of the levied amount will be assessed on the 30th day following the due date. Thereafter, the delinquent amount will incur an interest penalty of 1 percent per month.

(b) The Director of Public Safety has the authority for good cause shown to waive part or all of the penalties otherwise due under this section.

9.47.060. Appeal.

All decisions of the Director of Public Safety under Section 9.47.030 may be appealed. Such appeals shall be determined by the City Manager, or a designee, in writing. No personal appearance before the City Manager is required. In determining the appeal, the City Manager shall give deference to the decisions of the Director of Public Safety supported by substantial evidence. The City Manager shall decide the appeal in writing within ten days after the matter is submitted by the appellant. No appellant shall be required to implement a security and safety plan while an appeal is pending.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on February 26, 2008, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney