

DATE: September 4, 2012
STAFF: Hal Dean
Kraig Ecton

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

10

SUBJECT

Second Reading of Ordinance No. 079, 2012, Amending Certain Provisions of Chapter 23.5 of the City Code Relating to Special Events Permits.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on August 21, 2012, amends Chapter 23.5 of the City Code. Chapter 23.5 authorizes Special Events and currently requires that all permittees, including governmental entities, indemnify the City. This Code requirement has proven very difficult from fellow governmental entities and recent discussion with peer cities has indicated a willingness to no longer require governmental entities to indemnify.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - August 21, 2012
(w/o attachments)

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FORT COLLINS CITY COUNCIL

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SUBJECT

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EXECUTIVE SUMMARY

Chapter 23.5 of the City Code authorizes Special Events and currently requires that all permittees, including governmental entities, indemnify the City. This Code requirement has proven very difficult from fellow governmental entities and recent discussion with peer cities has indicated a willingness to no longer require governmental entities to indemnify.

BACKGROUND / DISCUSSION

During the last several years there has been a “tug of war” with other governmental entities when negotiating any agreements that include indemnification language. Most often, the City, just like other governmental entities, will resist agreeing to such provisions as the requirement to indemnify is difficult to reconcile with constitutional and statutory law in Colorado. Recent discussion between peer cities and the State has resulted in a consensus that indemnification language should no longer be required.

Chapter 23.5 of the City Code contains a provision that specifically requires that applicants for special events permits, including governmental entity applicants, must indemnify the City. Given the recent discussions with other peer cities and the State, this Ordinance would amend the City Code to remove that requirement for governmental entities. In lieu of indemnification, Section 23.5-11 is also being amended to require all public entity permit holders to provide liability insurance naming the City as an additional insured to ensure that even without indemnification, the City will have protection against claims asserted by any third parties who may sustain damages or injuries as a result of the special event for which the permit is issued.

FINANCIAL / ECONOMIC IMPACTS

There is no financial impact from this Code change.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

COPY

ORDINANCE NO. 079, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CERTAIN PROVISIONS OF CHAPTER 23.5
OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO SPECIAL EVENTS PERMITS

WHEREAS, Chapter 23.5, of the City Code authorizes the issuance of permits for special events and demonstrations in the City; and

WHEREAS, the City Council wishes to amend the provisions of this Chapter related to indemnification requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 23.5-2 of the Code of the City of Fort Collins is hereby amended by the addition of a new definition "*Public entity*" which reads in its entirety as follows:

Sec. 23.5-2. Definitions.

...

Public entity shall mean the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, district, or other political subdivision of the state, including any school district and institution of higher education.

...

Section 2. That Section 23.5-10 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23.5-10. Indemnification agreement.

Prior to the issuance of an event permit, unless the applicant is the City, the Coordinator shall require the applicant and authorized officer of the applicant's organization (if any) to sign an agreement for the permittee to reimburse the City for any costs incurred by it in repairing damage to City property occurring in connection with the permitted event proximately caused by the actions of the permittee, its officers, employees or agents, or any person who was under the permittee's control. All applicants except those that are public entities, shall also agree to defend the City against, and indemnify and hold the City harmless from, any liability to any persons resulting from any damage or injury occurring in connection with the permitted event proximately caused by the actions of the permittee, its officers, employees or agents, or any person who was under the permittee's control. Persons

who merely join in an event are not considered by that reason alone to be "under the control" of the permittee.

Section 3. That Section 23.11 of the Code of the City of Fort Collins is hereby amended by the addition of a new subparagraph (e) which shall read in its entirety as follows:

Sec. 23.5-11 Insurance.

(a) Prior to the issuance of an event permit, the Coordinator may require the applicant and authorized officer of the applicant's organization (if any) to possess or obtain public liability insurance to protect against loss from liability imposed by law for damages on account of bodily injury and property damage arising from the event. The Coordinator shall determine whether to require such insurance, and the amount of insurance that shall be required, based upon the considerations routinely taken into account by the City in evaluating loss exposures, including, without limitation, whether the event poses a substantial risk of damage or injury due to the anticipated number of participants, the nature of the event and activities involved and the physical characteristics of the proposed site or route. Such insurance shall name on the policy or by endorsement as additional insureds the City, its officers, employees and agents.

(b) If insurance coverage is required pursuant to Subsection (a) above, a copy of the policy or a certificate of insurance along with all necessary endorsements must be filed with the Coordinator no less than five (5) days before the date of the event unless the Coordinator for good cause changes the filing deadline, in which event such documents shall be provided on the date and time specified by the Coordinator.

(c) The insurance requirements of Subsections (a) and (b) above shall be waived by the Coordinator for demonstrations if the applicant or an officer of the applicant's organization signs a verified statement that he or she believes the event is a demonstration under the definition in this Chapter, and that he or she has determined that the cost of obtaining insurance is so financially burdensome that it would constitute an unreasonable burden on the right of First Amendment expression, or that it has been impossible to obtain insurance coverage. The statement shall include the name and address of one (1) insurance agent or other source for insurance coverage contacted to determine insurance premium rates for insurance coverage.

(d) If the Coordinator waives the insurance requirements set forth in Subsections (a) and (b), the City may, in its discretion, require the applicant to apply for insurance coverage for the event under a policy selected by the City. The applicant must provide any information pertinent to qualifying for the insurance coverage. The premium for such insurance coverage would be paid by the City rather than the applicant.

(e) Notwithstanding any provision of this section to the contrary, the Coordinator shall require all public entity permit holders to provide public liability insurance as

required by Subsection (a) above in lieu of indemnifying the City under the provisions of Section 23.5.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2012, and to be presented for final passage on the 4th day of September, A.D. 2012.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 4th day of September, A.D. 2012.

Mayor

ATTEST:

City Clerk