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City Attorney

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September 21, 2010

MEMORANDUM

TO: Kevin Fabino, Planning Manager

RE: Legal Options Regarding Permits for One-Day and Shorter-Term Special Events

ISSUE PRESENTED

What permits does the Fresno Municipal Code ("FMC") authorize for one-day and shorter-term private events on public and private property?

CONCLUSION

Depending on the type and location of the event, the FMC generally authorizes a variety of different types of permits including: i) special event permits issued by the Controller after consultation with the Chief of Police; ii) permits issued by the Director of PARCs for events occurring in designated areas of City parks; iii) City Manager parking permits; iv) median island permits from the Department of Public Works; v) funeral procession escort permits from the Finance Director after consultation with the Chief of Police; and vi) certain other miscellaneous permits. However, these permits may not be used to modify a land use subject to the City's zoning ordinance and associated entitlements. If the property is not zoned for the use, or the use is not otherwise permitted under the applicable land use requirements, then the entitlement (CUP, zoning, etc.) must be modified before the event may legally take place.

Finally, the FMC does not currently provide legal authority to the Director of Development and Resource Management ("DARM"), formerly the Planning and Development Department, to issue one-day or short-term permits, and any such permit is not valid as a matter of law.

ANALYSIS

I. One-Day Permits Issued By DARM

The authority for the Director of DARM to issue a "Special Permit" under FMC Section 12-405 is limited to variances, CUPs and site plans. Currently, the FMC does not provide legal authority to the Director to issue one-day or short-term permits as a matter of law. DARM may amend the FMC to obtain this authority through initiation of the text amendment process.

II. Special Event Permits

A special event permit may be issued by the Controller, after consultation with the Chief of Police, to "any person desiring to conduct or sponsor a parade, athletic event, or other special event in the city." (FMC §14-2403(h).) "Other Special Event" is defined as:

"[S]treet fair, art and craft show, carnival, block party, or other neighborhood activity, picnic, dance, rally, promotional or fund raising activities, community celebrations and observances, and other special events which occur on any city street, sidewalk, alley, or other public right-of-way, or other property owned or controlled by the city, or any event, so as to impede, obstruct, impair, delay, or interfere with the usual, normal and free pedestrian or vehicular use, or which requires, in the judgment of the Chief of Police, the deployment of peace officers for crowd control." (*Id.*)

In essence, a special event permit can be used for an event taking place on public right-of-ways such as streets and sidewalks. A special event permit may also be issued for certain events occurring on private property – to the extent it impacts or interferes with pedestrian or vehicular use or deployment of police officers. Like other permits, a special event permit cannot be used to modify a use on private property, which would be subject to the City's zoning ordinance and associated entitlements. Finally, a special event permit is not required for funeral processions, parades on a sidewalk involving less than 40 people and other types of limited events subject to a permit from PARCs. (FMC §14-2404.)

III. Parks Permits

The Director for the Parks Department may issue a permit for certain uses or activities in designated areas of a park involving more than twenty-five people. (See FMC §5-500 *et. seq.*). As part of the process, the Director must assess and evaluate a variety of issues, including the public health, safety and welfare problems arising from the occurrence of such activity or the use of the requested area of the park, the age of the participants, the hour of the conducting of the activity, the type of the activity proposed, the extent and type of advertising, the condition of the premises and other matters. (FMC §5-509(e).)

However, this authority is limited to designated areas of City owned or maintained parks and recreation centers, City and school playgrounds, or any park owned, operated or maintained by a special district. (FMC §5-501.) It cannot be used for those portions of City-owned parks which have not been specifically designated, nor can it be used for events occurring on private property. (See FMC §5-509.) In addition, a permit from PARCs has certain legal limitations regarding the use of parks for parking vehicles, which can only occur as an incidental matter associated with the event occurring in the designated area. Finally, if an applicant receives a park permit, there is no legal requirement to also apply for a special event permit if the activity is completely within the scope of the park permit. (See FMC §5-509(h).)

IV. City Manager Parking Permits

The City Manager is authorized by the FMC to issue parking permits for parking areas and driveways owned by the City.¹ The permits must be displayed in the front window in the vehicle, and is limited to the City parking areas specifically designated on the permit.

V. Median Island Permits

The Public Works Department is authorized by the FMC to grant a permit for certain activities on specified median islands. (See FMC §14-2502.) All permittees are required to provide insurance unless a hardship waiver is obtained, indemnify and hold harmless the City, and wear orange safety clothing. Other restrictions on age, signage, animals and activities are delineated in FMC Section 14-2508 *et seq.*

VI. Funeral Permits

The Finance Director, after consultation with the Police Chief, is authorized to issue funeral escort permits authorizing the direction of traffic. (See FMC §14-2101 *et seq.*)

¹ FMC Section 14-1016 states:

“PARKING PERMITTED ON CERTAIN CITY-OWNED PARKING AREAS AND DRIVEWAYS.

Whenever the Chief Administrative Officer determines that the efficient conduct of the city's business requires the parking or standing of vehicles on city property then he may issue parking permits therefor. The permit shall state the conditions under which the permit may be used and the location or locations to which it applies. The permit shall be signed by the Chief Administrative Officer or such other person as he shall designate. The permit shall, at any time, be revocable at discretion of the Chief Administrative Officer. When such permit is prominently displayed on the dashboard facing the front window on the driver's side, the user shall be permitted to park or stand a vehicle on the city property designated on the permit. The requirement of a permit shall not apply to (1) city-owned vehicles (2) vehicles parked in spaces provided expressly for such vehicles or (3) vehicles used in carrying out construction or other service for the city.”

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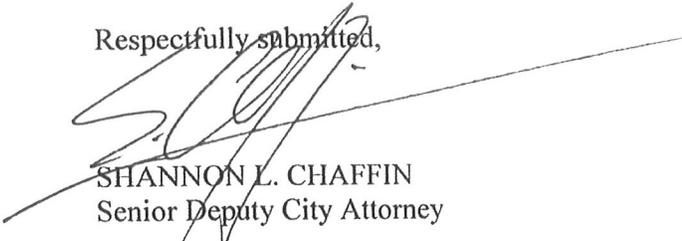
VII. Other Permits

The FMC also contains permit requirements for a variety of one-day and shorter-term activities including public auctions (FMC §9-800 *et seq.*), signs (FMC §12-1700), permits to do work in City streets and property (FMC §13-201), etc. Please contact our Office if you would like additional analysis as to these or other permit issues.

CONCLUSION

The information provided in this memorandum is for general reference purposes, and the availability of certain permits will vary according to the facts and circumstances of each particular matter. Please contact our Office for a legal assessment of permitting options regarding a specific matter.

Respectfully submitted,



SHANNON L. CHAFFIN
Senior Deputy City Attorney

cc: John Fox, Senior Deputy City Attorney

SLC/sah [54132sah/slc] 09/21/10