



Request for City Council Committee Action From the Office of the City Coordinator

Date: February 20, 2003

To: Ways & Means/Budget Committee

Referral to: Public Safety & Regulatory Services Committee
Transportation & Public Works Committee
Zoning & Planning Committee

Subject: Ordinance amendments relating to council and administrative special permits for the purpose of revising the authority and procedures for issuance of such permits.

Recommendation: That the City Council direct staff of the Office of the City Clerk, Department of Public Works, Division of Operations and Regulatory Services, the Planning Department, and other departments as may be appropriate, with assistance from the City Attorney's Office, to draft amendments to ordinances that currently utilize special or council permit processes, said amendments to be consistent with the following general recommendations whenever feasible:

1. Eliminate sign-off by the council member for the ward on administrative permits. Retain a procedure for notice to the ward council member where desired.
2. Eliminate ordinance references to "special" permits.
3. Eliminate use of "special council permits" for activities not authorized by code. Applications for licenses, zoning approvals, or other permits should only be accepted and processed in the manner authorized by the applicable provisions of the code of ordinances for the use or activity for which permission is requested.
4. Remove from the City Clerk's Office responsibility for processing and recordkeeping of permits that should be handled by the responsible department (e.g. Public Works, Licenses) and for which there is no need for centralized recordkeeping or tracking of the permit application in the Clerk's Office.

When prepared, proposed ordinance amendments shall be referred to the city council committee that has responsibility for the subject matter of particular ordinance to be amended. The Office of the City Coordinator is directed to continue to provide assistance and cross-department coordination in this matter.

Previous Directives

At the city council meeting of October 25, 2002, Council President Ostrow made the following motion:

Ostrow introduced the subject matter of ordinances amending various provisions of the Minneapolis Code of Ordinances relating to council and administrative special permits for the purpose of revising the authority and procedures for issuance of such permits which were given their first reading and referred to the Ways & Means/Budget Committee and such other Committees as to be determined.

The Office of the City Coordinator convened a working group of staff from affected departments to compile and evaluate existing ordinances that utilize council or administrative special permits. The recommendations of that staff working group are the basis for this request for council action.

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Approved by:

John Moir
City Coordinator

Jay M. Heffern
City Attorney

Presenter in Committee: Carol Lansing, Assistant City Attorney

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)

Action requires an appropriation increase to the Capital Budget

Action requires an appropriation increase to the Operating Budget

Background/Supporting Information

The direction to evaluate the City's current ordinances and practices relating to the use of council and administrative special permits was, in large part, a response to recommendations made in the report of Joseph Duffy, an independent investigator retained by the City following the indictment of former City Council Member Brian Herron for extortion. Although the use of special permits was not implicated in the Herron case, Mr. Duffy's investigation of the City's regulatory processes led him to conclude that existing practices relating to special council permits allowed for potential abuse and exposed the City to potential liability. His report recommended that the use of special council permits be ended except where explicitly authorized by law and that the City ensure that appropriate criteria and procedures are followed for their issuance.

Additionally, several council members expressed the opinion that, even where current ordinances explicitly require that a special permit be approved by the ward council member (e.g. encroachment and sign permits), such council member involvement and review of administrative permit matters was inefficient. Further, this practice creates a potential for

inconsistent application of permit standards from ward to ward, depending upon the individual perspective of the particular ward council member.

Identification of Ordinances and Procedures Relating to Special or Council Permits

In order to make specific recommendations regarding changes in ordinances or procedures in response to these concerns, the City Coordinator convened a staff working group including representatives of the following departments: City Clerk, Public Works, Licenses, Fire, Planning, and City Attorney. As a first step, the City Clerk's office compiled a list of the existing ordinances that utilize or reference special permits, council permits or special council permits. A copy of that list is attached.

The first ordinance on the reference list is Minneapolis Code of Ordinance ("MCO") §14.150. This ordinance provides the process framework for special permits where the code does not otherwise provide a specific review process. Section 14.150 vests responsibility for processing and issuing such special permits with the City Clerk. In order to implement this responsibility, the Clerk's Office has developed a form, "Application for Special Permit," a copy of which is attached.

The remaining ordinances on the list fall into three general categories: administrative permits, council permits, and cross-references. An example of an administratively-issued permit is the "special permit" required pursuant to MCO §74.60 to bring certain animals into the city that are otherwise prohibited; for example, to allow farm animals in a petting zoo. These permits are issued by the City Clerk following the approval of Animal Control.

An encroachment permit is an example of a "council permit" for which the code explicitly requires approval of the council member of the ward. MCO Chapter 95 requires that both the Department of Public Works and the ward council member give written approval of the special permit application; if either denies the application, the applicant may appeal the decision to the Transportation & Public Works Committee.

Also included on the list as a type of "council permit" are permits such as those for sidewalk cafés. MCO §265.280 requires applicants to obtain a "special permit" from the city council in order to establish a sidewalk café. The ordinance requires that the special permit be issued following a public hearing before the Public Safety & Regulatory Services Committee.

Several of the ordinances on the list contain references to special permits merely as cross-references to other code provisions that establish "special permit" procedures. See, for example, MCO §303.160, which regulates horse and carriage livery services and makes a cross-reference to §74.60 regarding the need for special permits to bring hooved animals into the City.

Discussion of Recommendations; Examples of Potential Amendments

1. Eliminate sign-off by the council member for the ward on administrative permits.

As discussed above, requiring approval by the ward council member of administrative permits is inefficient and may lead to inconsistent application of permit standards. When the ward council

member has information or concerns based upon his or her particularized knowledge of the ward that is relevant to the decision-making process, this information should be shared with staff who can evaluate it when determining whether the application meets the standards for issuance of the permit. Council members should not generally have individual decision-making authority for administrative permits and sign-off should be unnecessary. Staff can retain a procedure for notice to ward council members of permit applications received where desired.

In order to implement this direction, staff will return proposed amendments to the appropriate subject matter committee to remove requirements for individual ward council member approval. Examples of ordinance amendments falling into this category include:

- Encroachment permits (proposed amendment will go to T&PW)
- Sign and billboard permits (to PS&RS, with possible referral to Z&P)
- Building moving permits (to PS&RS)
- Temporary housing permits (to PS&RS)
- Tents (to PS&RS)

Staff will also evaluate whether any additional clarifications or improvements to the permit application procedure and standards should be made.

2. Eliminate ordinance references to “special” permits.

Currently, code provisions use the term “special” for both routine administrative permits or licenses and for permits that require a public hearing before a council committee. Staff believes that such uses of the term “special” create confusion about the appropriate review process. Staff recommends that the term “special” be eliminated from the description of permits wherever feasible. Examples of permits for which the term “special” can be eliminated include the following:

- Hoofed and wild animals (to PS&RS)
- Car washes – licenses (to PS&RS)
- Sidewalk cafes (to PS&RS)
- Display or sales of merchandise on sidewalks (to T&PW, PS&RS)
- Nicollet Mall restrictions (to T&PW)
- Decorations and banners (to (T&PW)

Staff will also prepare amendments to ordinances that cross-reference “special permit” provisions in order to make the cross-reference consistent with the amended language of the permit provision being referenced.

In addition to eliminating use of the term “special” to describe these permits, staff has also identified some ordinances where the permitting process could be streamlined, for example, by providing an administrative review process where full council approval is now required. For some other ordinances, staff has determined that the existing ordinances should be amended to add standards or to conform the procedures described in the ordinance with actual practice. Where staff has identified such additional recommendations, these recommendations will be presented to the appropriate subject matter committee.

- 3. Eliminate use of “special council permits” for activities not authorized by code. Applications for licenses, zoning approvals, or other permits should only be accepted and processed in the manner authorized by the applicable provisions of the code of ordinances for the use or activity for which permission is requested.**

As noted in the Report of the Independent Investigator, a practice had evolved in the City whereby the City Council granted special permits that were not authorized by any provision of the City ordinances. The Duffy Report referred to these as “non-prescribed special permits.” Historically, non-prescribed special permits typically were used to waive the normal review and approval process established in the City’s zoning code. The special permit process and application form described in MCO §14.150 have been used by businesses and individuals to apply for these non-prescribed permits. Although this practice has decreased significantly, there is still some confusion within City government and the community about the availability of a “special council permit” for uses or activities that are not allowed by the code.

In order to eliminate the use of non-prescribed “special permits,” staff recommends that MCO §14.150 be repealed and that the City Clerk be directed to eliminate use of the existing “Application for Special Permit.” Prior to the repeal, staff should ensure that specific review processes and application forms are clarified or established as needed for all prescribed permits.

- 4. Remove from the City Clerk’s Office responsibility for processing and recordkeeping of permits that should be handled by the responsible department (e.g. Public Works, Licensing) and for which there is no need for centralized recordkeeping or tracking of the permit application in the Clerk’s Office.**

Consistent with the repeal of MCO §14.150, permit procedures that currently involve processing, issuance or recordkeeping of permits by the City Clerk should be evaluated to determine if it is feasible to take the Clerk’s Office “out of the loop” and leave responsibility directly in the affected department. For example, Animal Control could become solely responsible for issuance of permits for hooved and wild animals in the City. Similarly, there appears to be no need for the City Clerk to issue building moving permits following approval by Inspections.

Conclusion

It is recommended that the Ways & Means Committee direct staff to move forward with preparation of proposed ordinance amendments, consistent with the directives described in the Recommendation section above, for referral to the appropriate subject matter committees of the City Council. This will allow council members to evaluate each ordinance to be amended on a more individualized basis.