

**ORDINANCE
No. 09-18**

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, CREATING A SPECIAL EVENT PERMIT WITH CRITERIA TO REGULATE SPECIAL EVENTS OCCURRING WITHIN THE CITY; PROVIDING FOR RATIFICATION; PURPOSE AND INTENT; PERMIT REQUIRED; DEFINITIONS; APPLICATION AND FEE; MINIMUM CRITERIA PRIOR TO ISSUANCE OF A SPECIAL EVENT PERMIT; SPECIAL EVENT VENDOR; HELICOPTERS, FIXED, ROTARY WING OR OTHER AIRCRAFT; DURATION OF SPECIAL EVENT AND LOCATION; ALCOHOLIC BEVERAGES; HOURS OF OPERATION; INDEMNIFICATION; SUSPENSION OR REVOCATION OF SPECIAL EVENT PERMIT; APPEAL; ENFORCEMENT, VIOLATIONS AND PENALTIES; SOVEREIGN IMMUNITY; SEVERABILITY; CONFLICT; INCORPORATION IN CODE AND EFFECTIVE DATE.

WHEREAS, it is beneficial to the City and its residents to attract special events to the City; and

WHEREAS, from time to time special events have occurred in the City without any formal review procedures; and

WHEREAS, it is necessary to provide minimum criteria to regulate special events occurring in the City; and

WHEREAS, the City Council has received input, comments and evidence from interested persons and citizens of the City; and

WHEREAS, the City Council has determined that it is in the best interest of the public health, safety, environment and general welfare to adopt this Ordinance establishing minimum criteria to regulate special events.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, confirmed and adopted as legislative findings of the City Council.

SECTION 2. PURPOSE AND INTENT. The purpose and intent of the City Council in adopting this Ordinance is to recognize that there are certain special or unique events, which provide for an economically viable community. Special events have been determined to be in the best interest of the public and may be allowed by the City Council under special permits. This Ordinance applies to events only on private property.

SECTION 3. PERMIT REQUIRED. Any special event held on private property within the corporate limits of the City of Fellsmere shall obtain a special event permit, unless exempt by the provisions of this Ordinance. All special events shall comply with the provisions set forth in this Ordinance, the City Code of Ordinance, Land Development Code, and with all terms, conditions and requirements identified in an issued permit. A City sponsored event may be exempt by the City Council from the requirements of this Ordinance.

SECTION 4. DEFINITIONS. The following words, terms and phrases, when used in this Ordinance shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Applicant means the individual(s) or entity who makes application to the City to hold a special event.

City means the City of Fellsmere, Florida.

City sponsored event means any event sponsored by the City. City sponsored events may be exempt for the procedural and fee requirements contained herein as determined by the City Council.

Special event(s) means an event or activity that is characterized by its limited duration, infrequent occurrence, or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary activities include, but are not limited to, carnivals, circuses, outdoor seasonal sales, concerts, marathons, races (vehicle or pedestrian), walks, use of a tent or sound amplification.

Special event application means the form provided by the City for the purpose of processing a special event.

Special event fee means the fee an applicant is required to pay, in accordance with the special event permitting procedures, before a special event application will be processed.

Special event permit means the permit that is issued by the City Council.

Special event permitting procedures means the procedures adopted by this Ordinance, as may be amended from time to time, pertaining to the issuance, suspension and revocation of a special event permit.

Special event vendor means a person, corporation, company or business that sells or offers for sale, good, wares, merchandise, beverages or food-stuff of any kind or nature whatsoever at a special event.

SECTION 5. APPLICATION AND FEE.

- (a) A person seeking issuance of a special event permit shall file an application with the City Clerk on forms provided by the City. The application fee and any additional charges shall be established by resolution and may vary depending upon the event and entities for profit and entities not for profit as determined by the City Council.
- (b) The application for a special event permit may be changed from time to time by the City Manager to improve the information or process, but shall include the following minimum information:
 - (1) The name, local and permanent address, telephone numbers and email address of the applicant seeking to conduct such special event;
 - (2) If the special event is proposed to be conducted for, or on behalf of, or by an organization, the names, local and permanent addresses, telephone numbers and email address of the headquarters of the applicant organization and of the authorized and responsible head(s) of such organization;
 - (3) The name, address, telephone numbers and email address of the person who will be responsible for conducting the special event. If the person conducting the event is not the property owner, written permission from the owner of the property must be provided;
 - (4) The type of special event;
 - (5) The date or dates when the special event is to be conducted, the hours of such event and the location;
 - (6) The estimated number of participants or those otherwise attending, and the estimated number of vehicles participating or parking near the event;
 - (7) The applicant shall submit a site plan reflecting the intended temporary show, and included in said site plan shall be the particular property, together with dimensions of said property, all structures, tents, sanitary facilities, parking (on and off site), ingress and egress, setbacks, pedestrian traffic access, vehicular traffic control plan, emergency access, buffering of adjacent residential uses, signage, area where beer and/or wine will be sold and consumed and other information as may be necessary to review said application;
 - (8) The number, type, location and provision for toilet facilities during the event;
 - (9) Provisions for security, traffic control, crowd control and fire safety;

- (10) Life safety plan;
- (11) Provisions for any needed electric power;
- (12) Whether loudspeakers will be used for announcing and whether any music will be provided, the hours of duration and location of such loudspeakers or bands, along with the numbers and types of such amplifiers or other such devices;
- (13) Intent to have food and drinks and whether or not such food and drinks will be sold or otherwise disbursed and who will be supplying such food or drinks;
- (14) A statement describing what portion of any street will be impacted by the event;
- (15) Provisions for clean-up during and after the conclusion of the special event;
- (16) Other information requested by the City or deemed applicable by the applicant.

SECTION 6. MINIMUM CRITERIA PRIOR TO ISSUANCE OF A SPECIAL EVENT PERMIT.

(a) A special event permit shall not be issued until the City Council in its sole discretion determines that the following criteria will be met and if deemed necessary, determines conditions to be placed upon any approval to insure compliance. The applicant must show or represent how the following will be provided, as applicable:

- (1) All temporary structures, sanitary facilities and electrical wiring to be permitted and inspected.
- (2) If the proposed event is to have temporary trailers, and said trailers are to be open for use by the general public, they shall be required to be handicap accessible. In addition, trailers open to the general public are required to provide proper tie downs for appropriate wind load restraint and receive site inspections/approval from the Building Department. This requirement shall not be required if the trailers are not open to the general public and used only by sales staff representatives to conduct the temporary sales event.
- (3) All tents shall be required to be fire retardant and appropriate documentation noting fire retardants is required to be provided to the Fire Marshal. The Fire Marshal will inspect tents on-site for appropriate documentation and setup.
- (4) The applicant shall be responsible for arranging all the required inspections prior to the commencing of the event. Failure to obtain the required inspections shall

cause the special event permit to become void.

- (5) A banner/sign, prominently displaying the name and address of the person or entity responsible shall be required to be placed on-site. All flags, banners and signs shall be in compliance with the sign code.
- (6) The traffic to be generated by the intended temporary use. Ingress and egress to the property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in the case of a fire or catastrophe.
- (7) The effect of the temporary use upon surrounding properties and general compatibility with adjacent properties and other properties in the district. Nuisance factors detrimental to adjacent and nearby properties shall be considered. Nuisance factors shall include, but not be necessarily be limited to, noise, odor, smoke, glare, electrical interference, and/or mechanical vibrations.
- (8) Compliance with all applicable codes, including but not limited to: buildings, safety and fire regulations as approved by the Police Chief, Fire Marshal, and Building Official. The City reserves the right to place additional conditions and bill for recovery of costs associated with assuring code compliance.
- (9) A plan shall be provided by the applicant detailing the parking and loading/staging for the event, both on the event site and off site, with particular attention to the ingress and egress to the event site. The area of the event/show shall not place the existing use of the site under its minimum on-site parking requirements.
- (10) Screening and buffering of adjacent residential uses.
- (11) Temporary signs and temporary proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility and harmony with surrounding properties. All signs and lighting shall be in compliance with the City's sign and lighting requirements.
- (12) Adequate law enforcement services shall be required at the event. Unless otherwise authorized by the Chief of Police, the Fellsmere Police Department shall be the sole provider for public law enforcement services. The number of public law enforcement personnel and the number of applicant(s) provided private security personnel required to service the special event shall be determined by the Chief of Police. The fee schedule for City law enforcement service shall be established by Resolution.
- (13) Adequate fire protection services shall be required at the event. Unless

otherwise authorized by the Indian River County Fire Chief, the Indian River County Fire Department shall be the sole provider for fire protection services. The number of certified Fire Department personnel, if any, and the level of fire protection services required to service any special event shall be determined by the City in consultation with the Fire Chief, with final approval by the City. The fee for fire protection services shall be established by Resolution.

- (14) Adequate emergency medical services shall be required at the event. Unless otherwise authorized by the Indian River County Fire Chief, the Indian River County Fire Department emergency medical services shall be the sole provider for emergency medical services. The number of emergency medical services personnel, if any, and the level of emergency medical care services necessary shall be determined by the City in consultation with the Fire Chief. The fee for emergency medical services shall be established by Resolution.
- (15) Should the services of the City Public Works Department be required, the number of personnel, type of equipment and the type of public works services required to service the event shall be determined by the applicant and the City. The fee for the Public Works Department services shall be established by Resolution.
- (16) The number of Building Department personnel and services required to service the special event shall be limited to inspection services required in the initial setup of the event and both a pre and post inspection at the conclusion of the event. The fee for Building Department services shall be set by Resolution.
- (17) The number and location of portable toilets located on-site and on public property within one thousand (1000) feet of the property on which the event is conducted, shall be determined by the City.
- (18) Garbage pick up and trash collection on-site as well as on public property within one thousand (1000) feet of the property on which the event is conducted shall be the sole responsibility of the applicant.
- (19) The City shall have the full authority to dictate the closure of any city street or roadway and/or the detour of all traffic flow on any city street or roadway in relation to the management of a permitted special event. The applicant is responsible for submitting a plan detailing a proposed street closure. Barricades and temporary signage for approved locations shall be provided by the applicant(s), subject to city approval. It shall be the responsibility of the applicant(s) to provide setup and breakdown at the approved times.
- (20) Pedestrian traffic access from parking areas to the event shall be designated on the site plan and approved by the City. Pedestrian traffic access involving the

crossing of a major road may require additional traffic control measures to be implemented.

(21) It shall be the responsibility of the applicant to ensure that the structural integrity of all temporary structures erected for the special event are safe, structurally sound and adequately based on the number of persons specified to use the structure. The height of approved temporary structures shall not exceed thirty (30) feet above the existing ground elevation at the location the temporary structure is erected. The location of all temporary structures, erected for the purpose of the event, shall be approved by the City.

(22) The City may consider any additional criteria deemed necessary and place any conditions and/or requirements necessary to insure compliance with this Ordinance or with any additional criteria that may be imposed on granting a special event permit.

(b) The applicant shall be responsible for compliance with the terms and conditions set forth in any issued special event permit and the requirements set forth in this Ordinance.

(c) The City may require that the head(s) of any entity or organization making application to the City for a special event permit be personally liable for compliance with the terms and conditions set forth in any issued special event permit and the requirements set forth in this Ordinance.

(d) If a special event is not approved, the City shall not be responsible for any costs incurred by the applicant.

SECTION 7. SPECIAL EVENTS VENDOR. It shall be unlawful for a special event vendor to engage in such business within the City without first obtaining a Business Tax Receipt from the City in accordance with Chapter 22, Article II Licensing of the Code of Ordinances and payment of appropriate fee.

SECTION 8. HELICOPTERS, FIXED, ROTARY WING OR OTHER AIRCRAFT. If helicopters, fixed or rotary winged aircraft, hot air balloons, ultralights and /or any other type of aircraft are to be used in any aspect of the special event, the location of landing, activities and/or display site(s) shall be approved by the City. No refueling operations shall be permitted and the area(s) shall be appropriately marked and designated as "Aircraft Landing Zone". Times of landings, takeoff and all aircraft related activities shall be approved by the City. All aircraft landings shall be FAA approved.

SECTION 9. DURATION OF SPECIAL EVENT AND LOCATION.

(a) A special event permit may be granted by the City Council for up to a maximum of ninety (90) consecutive days. The City Council may provide for a review of a permit at any time to determine compliance with this Ordinance and any

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conditions placed on the approval of the special event permit. The City Council may authorize the City Manager, or designee to conduct a review of the permit to determine compliance with this Ordinance and all conditions or requirements placed on the permit and authorize the continuance of the permit provided there is no outstanding violation(s) of this Ordinance or any conditions or requirements placed on the issuance of the special event permit. However, under no circumstances shall the special event permit be valid for more than ninety (90) consecutive days from the date of approval by the City Council. No more than two (2) special event permits may be granted for the same property during any consecutive twelve (12) month period.

(b) The special event permit may be granted for an event that is located within the following zoning or land use districts:

- (1) Industrial Restricted (IR)
- (2) Industrial Light (IL)
- (3) Industrial
- (4) Regional Employment Activity Center (REAC)
- (5) General Commercial (C-2)
- (6) Planned Development District (PDD)

(c) Events to be held on lands shown in (b) (1-6) above must be on tracts of land which are one (1) acre or larger.

(d) A special event permit may be granted for an event that is located within the following additional zoning or land use districts on lands less than or equal to one (1) acre in size. Such events must be contained solely on the permittee's property.

- (1) Neighborhood Commercial (C-1)
- (2) Residential Professional Office (RPO), or
- (3) Old Town District (OTD)

(e) Special events planned on Public and Institutional (PIN) lands designated on the zoning or land use maps are exempt from the requirements of this ordinance.

(f) Religious institution related events on their own property on lands consisting of less than five (5) acres under any land use or zoning designation are exempt from the requirements of this Ordinance.

SECTION 10. ALCOHOLIC BEVERAGES.

(a) At the sole discretion of the City Council, alcoholic beverages limited to beer as defined in Section 563.01 Florida Statutes 2008, as amended, and wine as defined in Section 564.01 Florida Statutes 2008, as amended, may be sold, distributed and consumed on the property of the special event in accordance with Florida State Statutes and the procedure stated in this Section. The possession or consumption of beer and/or wine shall not be the primary purpose of those attending the special event, but may be incidental thereto and only if food is also served. For the purpose of this Section alcoholic beverages means beer and/or wine. The sale of alcoholic beverages shall be subject to the following:

- (1) Beer and/or wine may be sold at the special event only by not-for-profit organizations or a nationally recognized not-for-profit service organization (the "Organization").
- (2) The special event must be open to the general public.
- (3) All applicable state and local laws and ordinances relating to the consumption and possession of alcohol, will be enforced, including proof of licensing by the State of Florida, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, and providing sufficient personnel responsible for inspecting identification of all individuals purchasing alcoholic beverages to ensure they are of lawful drinking age.
- (4) Alcoholic beverages sold at the special event will be limited to only beer and/or wine.
- (5) At least one (1) member of the Organization has successfully completed a program and holds a valid certification for handling and sale of alcohol.
- (6) The proposed sales and/or consumption activity will not entail extraordinary or burdensome expense of police operation by the City.
- (7) The use of alcoholic beverages is not expected to result in violence, crime, or disorderly conduct.
- (8) No glass or metal containers will be allowed. Alcoholic beverages shall be served in containers meeting industry standards for such events and shall be so designed and constructed that law enforcement officers may ascertain their contents upon visual inspection and shall not include sport drink bottles, ceramic or glass mugs, closed containers, or other

containers not clearly labeled as containing an alcoholic beverage.

- (9) The sale and consumption of alcoholic beverages shall be confined to designated and secured areas within the event venue or shall be confined within a secured perimeter for the entire event (the “designated area”).
 - (10) The applicant shall pay any additional costs of police or other City services attributed to the sale or consumption of alcoholic beverages during the event.
 - (11) Permissible hours of sale of beer and/or wine shall be in accordance with the provisions of Chapter 6 Alcoholic Beverages of the Code of Ordinances.
 - (12) It shall be a violation of this Ordinance to sell, distribute or consume any alcoholic beverages other than beer and/or wine or to permit anyone possessing or consuming beer and/or wine to leave the designated area.
- (b) The City Council shall consider the request to sell beer and/or wine and shall approve, approve with conditions or deny the request based upon the following guidelines:
- (1) The nature of the event.
 - (2) The effect, if any, on the health, safety and welfare of City residences.
 - (3) The anticipated number, age and conduct of persons attending the event.
 - (4) The day(s) and time(s) of the event.
 - (5) The adjacent areas uses; the anticipated impact the sale, distribution and consumption of beer and/or wine would have on adjacent public places, its uses and the special event.

SECTION 11. HOURS OF OPERATION. No use shall be conducted between the hours of 11:00 p.m. and 8:00 a.m. Setup, take down and cleaning activities are not subject to the above hours of use restrictions and may be conducted at any time. No person shall be allowed to reside on the premises overnight, except for a security guard and the guard’s family members and personnel associated with an event. The City Council, pursuant to any conditions it may deem necessary, may in its sole discretion, allow other persons to stay on the premises overnight.

SECTION 12. INDEMNIFICATION. The special event permit shall contain an indemnification provision to indemnify, defend, and hold harmless the City in substantially the following form:

Indemnification

Applicant (_____ *others*) (“Indemnitor”) shall at its own cost and expense hold harmless, defend and indemnify the City of Fellsmere, Florida, its City Council, employees, officers and agents (collectively “Indemnitee”) hereunder from any and all claims, demands, actions and causes of action, losses, damages, liabilities, costs, expenses, and court costs, including, without limitation, interest, penalties, and reasonable attorneys’ fees and expenses, asserted against, related to, resulting from, imposed upon, or incurred by Indemnitee, directly or indirectly, by reason of, relating to, or resulting from loss or damage or injury of any kind whatsoever (including death) which may arise from the issuance of the special event permit, arising from any cause whatsoever whether foreseen or unforeseen, known or unknown, whether by negligent act or omission or otherwise. Nothing herein is intended to serve as a waiver or sovereign immunity by the City to which sovereign immunity from, or limitation of, liability the City may have under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes, as amended. Nothing herein shall be construed as consent by the City to be sued by third parties in any matter, whether arising out of the special event permit or anything else whatsoever.

SECTION 13. SUSPENSION OR REVOCATION OF SPECIAL EVENT PERMIT.

- (a) Upon a failure to comply with any of the requirements of this Ordinance or any conditions or requirements imposed on the approval of the special event permit, the City Manager or designee shall have the authority to immediately suspend the special event permit and order, in writing, the use of the property to immediately cease and desist until the violation(s) is corrected. The City Council shall have the authority to revoke the special event permit. Prior to taking any action to revoke the special use permit, the applicant shall be notified in writing of the violation(s) and be given two (2) days to correct the violation(s). The time to correct the violation(s) may be extended for up to an additional ten (10) days, in two (2) day intervals by the City Manager or designee, at the sole discretion of the city council, upon a showing of good cause, that is beyond the control of the applicant. If the applicant does not correct the violation(s) within the time allowed, the city council shall hold a hearing on the matter and the applicant shall be given written notice of the date, time and place of the hearing. The applicant shall have the right to appear in person or through an attorney and respond to the action proposed to be taken. The decision of the city council shall be final. This action by the city council is in addition to any action that may be taken through the Code Enforcement process.
- (b) The City Manager or designee shall have the authority to suspend or revoke a special event permit issued hereunder instantly when a public emergency arises where the police resources required for that emergency are so great that the deployment of police services for the special event would have an immediate and adverse effect upon the welfare and safety of persons or property.

SECTION 14. APPEAL.

- (a) Any aggrieved applicant shall have the fourteen (14) calendar days to appeal any decision by the City Manager to the City Council. The City Council shall hold a hearing on the matter and the applicant shall be given written notice of the date, time and place of the hearing. The applicant shall have the right to appear in person or through an attorney. The decision by the City Council on such appeal shall be final.
- (b) Any person desiring to appeal a final decision of the City Council under this Ordinance may apply for judicial relief to the Circuit Court in the Nineteenth Judicial Circuit in and for Indian River County within thirty (30) days after rendition of the decision by the City Council. Review shall be governed by the Florida Rules of Appellate Procedure.

SECTION 15. ENFORCEMENT, VIOLATIONS AND PENALTIES.

- (a) The City Manager or designee or Code Enforcement Officer are hereby directed to enforce this Ordinance except where enforcement is by the building official or other authorized individual, board or city council.
- (b) Any person who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be punished or otherwise subject to the provisions of Sections 1-5, 1-6 and 2-166 et al., as amended, of the Code of Ordinances of the City of Fellsmere, Florida. Each day a violation exists shall constitute a separate offense.

SECTION 16. SOVEREIGN IMMUNITY.

- (a) Nothing in this Ordinance shall be construed to effect in any way the City's rights, privileges and immunities as set forth in Section 768.28 Florida Statutes 2008, as amended.
- (b) Nothing herein is intended to serve as a waiver or sovereign immunity by the City to which sovereign immunity from, or limitation of, liability the City may have under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes, as amended. Nothing herein shall be construed as consent by the City to be sued by third parties in any matter, whether arising out of the special event permit or anything else whatsoever.

SECTION 17. SEVERABILITY. If any portion, clause, phrase, sentence or classification of this Ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the Ordinance. It is hereby declared to be the express opinion of the City Council of the City of Fellsmere that any such

unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this Ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this Ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 18. CONFLICT. All previous ordinances, resolutions or motions of the City, which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 19. INCORORATION IN CODE. The provisions of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word "ordinance" may be changed to "section", "article", "chapter", or other appropriate word, and the sections of the ordinance may be re-titled, re-numbered, or re-lettered, to accomplish such codification.

SECTION 20. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member Savage and Herrera. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor, Susan P. Adams
Council Member Fernando Herrera
Council Member Joel Tyson
Council Member Sara J. Savage
Council Member Daniel Naranjo

yes
yes
yes
yes
absent

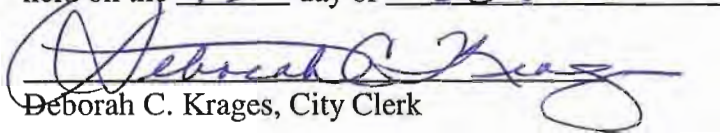
The Mayor thereupon declared this Ordinance fully passed and adopted this 1st day of October, 2009.

CITY OF FELLSMERE, FLORIDA
Susan P. Adams
Susan P. Adams, Mayor

ATTEST:
Deborah C. Krages
Deborah C. Krages, City Clerk



I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the 15th day of October, 2009, and the first reading was held on the 17th day of September, 2009, and the public hearing was held on the 1st day of October, 2009, and the second and final reading was held on the 15th day of October, 2009.


Deborah C. Krages, City Clerk