

24¹ ORDINANCE No. 113860

Park Department

24¹ COUNCIL BILL No. 106389

The City of


AN ORDINANCE governing the permit system for the use of park and recreation facilities, setting guidelines, and adding new sections to Chapter 18.12 of the Seattle Municipal Code.

Honorable President:

Your Committee on PARKS

to which was referred the within Co report that we have considered the

COMPTROLLER FILE No. _____

Introduced: SEP 21 1987	By: EXECUTIVE REQUEST
Referred: SEP 21 1987	To: Parks + Public Works
Referred:	To:
Referred:	To:
Reported: FEB 29 1988	Second Reading: FEB 29 1988
Third Reading: FEB 29 1988	Signed: FEB 29 1988
Presented to Mayor: MAR 1 1988	Approved: MAR 8 1988
Returned to City Clerk: MAR 8 1988	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained: 

2/22/88

Examination

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

President:

Committee on

PARKS & Public Grounds

was referred the within Council Bill No.

106389

and we have considered the same and respectfully recommend that the same:

PASS 3-0 2/17/88

2/22/88 Held over (waiver)

Vote 9-0

Committee Chair

JGB:bjw
9/8/87

113860
C.B. 106389

ORDINANCE 113860

AN ORDINANCE governing the permit system for the use of park and recreational facilities, setting guidelines, and adding new sections to Chapter 18.12 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. There are added to Seattle Municipal Code Chapter 18.12 (Ordinance 106615, as amended) three new sections as follows:

Section 18.12.042. Permit System

The Superintendent may establish a permit system and require a permit for:

- A. Reserving any room or part of a community center, athletic field, picnic facility, stage, or other defined area of a park for a certain time or series of times; and granting the exclusive use thereof during the time reserved.
- B. Posting any signs, posters or notices; placing or erecting any structure or obstruction of any kind within a park, whether temporary or permanent; engaging in any competitions involving a vehicle, boat, aircraft, or animal, or launching or landing aircraft or airborne conveyance; or cutting or removing any tree or plant material;
- C. Making any improvement to or in a park or constructing a public work;
- D. Conducting a commercial activity; using any outdoor electrical power outlet; or laying cables or extending wires in or over a park; or using any park or facility during the hours it is closed to the public.

1 E. Making any use of a park or recreational facility for an
2 event that differs in kind from the use and enjoyment of
3 the park or recreational facilities by the general
4 public of the premises.

5 No permit is required of park employees acting in the scope
6 and course of their duties. Exemptions may be made for
7 abutting owners, who maintain park boulevards, with respect to
8 the area maintained; for concessionaires as to the area under
9 concession; and as to governmental officials acting under
10 authority of law. Issuance of a permit shall be subject to
11 payment of such fees or charges as required by ordinance or
12 authorized by resolution of the City Council.

13 A permit for an event may authorize the placing of
14 temporary signs, posters or notices reasonably related
15 thereto.

16 All permits shall be wholly of a temporary nature, shall
17 vest no permanent right, and may be revoked upon thirty days'
18 notice or, if the permit so states, upon shorter notice.

19 Section 18.12.045 Terms and Conditions

20 The Superintendent may condition the permit or impose such
21 terms and conditions as appropriate to protect the health,
22 safety and welfare of the public and/or the park; to avoid or
23 limit unnecessary interference with other uses or users of the
24 park; to minimize disturbance of the surrounding neighborhood;
25 and to require the user to leave the area under permit in a
26 condition after the activity or event as it was beforehand.
27 For this purpose, the Superintendent may require the user to
28 furnish public liability and property damage insurance, naming
the City as an additional insured, in such amounts as

1 reasonably necessary to provide recompense for personal injury
2 or death or property damage to a member of the public as a
3 result of the event or activity; execute an indemnity and/or
4 hold harmless agreement; and/or make a reasonable security
5 deposit or provide a bond.

6 The terms and conditions of a permit (including providing
7 insurance and/or security deposit) shall not infringe upon
8 rights of petition, assembly, or free expression protected by
9 the First Amendment of the United States Constitution and/or
10 Article I, Sections 3, 4 and 5 of the Washington Constitution.
11 If an applicant asserts that a term or condition proposed by
12 the Superintendent infringes upon a constitutional right, the
13 Superintendent shall have the burden of showing that the
14 proposed term or condition is a reasonable restriction on the
15 time, place and manner of exercising the right and is valid.

16 Section 18.12.047 Refund of Deposits and Fees

17 The Superintendent is authorized to make refunds of fees
18 upon timely cancellation of an event or activity and to return
19 all or any portion of any security deposit when no longer
20 needed or after costs that may be charged against the permit
21 have been paid.
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(To be used for all Ordinances except Emergency.)

Section 2. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 29th day of February, 1988,
and signed by me in open session in authentication of its passage this 29th day of
February, 1988.

President of the City Council

Approved by me this 8th day of March, 1988.

Mayor.

Filed by me this 8th day of March, 1988.

Attest:

Norward J. Brooks
City Comptroller and City Clerk.

(SEAL)

Published _____

By

Theresa Dunbar
Deputy Clerk.

☐ PUBLISH ☐ DO NOT PUBLISH

CITY ATTORNEY _____

Seattle
Department of
Parks and Recreation

Charles Royer, Mayor

Walter R. Hundley, Superintendent

RECEIVED

FEB 29 1988

DOLORES SIBONGA
SEATTLE CITY COUNCIL MEMBER



MEMORANDUM

DATE: February 29, 1988

TO: Dolores Sibonga, Chair, Parks and Public Grounds Committee

FROM: C. M. Girtch, Acting Superintendent

SUBJECT: An Ordinance Governing the Permit System for the Use of Park and Recreation Facilities, Setting Guidelines and Adding New Sections to Chapter 18.12 of the Seattle Municipal Code

Recently, you received a memorandum from Jorgen Bader, Assistant City Attorney responding to the ACLU's concerns regarding this legislation. We believe the ordinance before you regarding the Department's permit process clearly safeguards constitutional rights of citizens who wish to use our parks for special events.

The passage of this ordinance reaffirms our existing policy and procedure for issuing permits. A copy of this procedure is attached. This procedure was developed with the assistance and approval of the ACLU approximately six years ago.

The procedure allows for a speedy appeal if an applicant believes his activity is protected by the Bill of Rights and he should not be required to provide insurance. Attached to this memorandum is a list of events in 1987 where insurance was not required for issuance of a permit.

In the last four years, there has been only one appeal based on constitutional rights to our original request for insurance from an applicant. Peace Movement Northwest requested use of several parks for a series of rock concerts. Originally we asked them to provide liability insurance. On their appeal, they stated their purpose was political and we waived our request for insurance.

CMG:jsy

Attachments

cc: Jorgen Bader, Law Department
Virginia M. Swanson, Director, Recreation Programs
Jeff Sandoz, Administrative Assistant

7020315 02/07/87 Saturday 10am to 4pm
13 Occidental Park Rally Memorial free food gathering
Downtown Emergency Service Center Patti Whitehead 3434 S. 144th #200 Seattle, WA 98168
600 15.00 0.00

7030814 03/14/87 Saturday 3pm to 9pm
28 Occidental Park Religious Rally
Fishermen for Christ Emil Vinberg PO Box 5442 Lynnwood, WA 98046
100 15.00 0.00

7043311 04/11/87 Saturday 8am to 3pm
67 Lower Woodland 1-3 Egg Hunt
Telephone Employees Activities Assn Carmen Olsen 1600 Bell Plaza Rm 408 98191
350 15.00 0.00

7042512 04/12/87 Sunday 1pm to 5pm
59 Gas Works Park Rally
Conscience & Military Tax Campaign Carolyn Stevens P.O. Box 23146 Seattle, WA 98102
250 15.00 40.00

7041918 04/18/87 Saturday 8am to 1pm
53 Genesee Park Egg Hunt
Beni Hassan Court #45 Judith Franklin 110 27th Ave Seattle, WA 98122
130 15.00 0.00

7042018 04/18/87 Saturday 9am to 1pm
54 Lincoln Park Egg Hunt
WS Am. Legion Post #160 Dennis Snell 3618 SW Alaska 98126
350 15.00 0.00

7042718 04/18/87 Saturday 10am to 2pm
61 Meridian Park Egg Hunt
Jubilee Club Jim Milne 9723 Densmore N. Seattle, WA 98103
50 15.00 0.00

7043818 04/18/87 Saturday 10am to 3pm
72 Othello Park Egg Hunt
Seattle Soul Van Club Theodore Young 2810 E. Yesler Way #9 98122
125 15.00 0.00

7041019 04/19/87 Sunday 6am to 8am
44 Magnuson Park Religious Sunrise Service
Friends Memorial Church Aurora Vaezie 6826 42nd Ave NE 98115
300 15.00 0.00

7041119 04/19/87 Sunday 5:30-8:00am
45 Green Lake Sm. Crafts Ctr. View Are Religious Sunrise Service
The Fairview Church Jim Lyon 844 NE 78th Sea 98115
210 15.00 0.00

7041419 04/19/87 Sunday 6am to 8am
48 Matthews Beach Religious Sunrise Servicens
Wedgewood Presbyterian Church Ted Ormbrek 3833 NE 87th Seattle, WA 98115
80 15.00 0.00

7042219 04/19/87 Sunday 6:30am to 9am
56 Gas Works Park Mound Religious Service
Wallingford United Methodist Church Liz Kennedy 2115 N 42nd Sea 98103
115 15.00 0.00

7043419 04/19/87 Sunday 9am to 12noon
68 Denny Park Egg Hunt
Unity Church Catherine Links 200 8th Ave N. Seattle 98109
100 15.00 0.00

7044219 04/19/87 Sunday 1pm to 5pm
76 Powell Barnett Park Egg Hunt
23rd & Cherry Fellowship Hall William Foster 2701 E. Cherry St. PO Box 22666 98122
100 15.00 0.00

7044923 04/23/87 Friday 10am to 10:30am
173 Woodland Park Rally Political
Charles Frederick Randall 7200 53rd Ave NE Marysville, WA 98270
5 15.00 0.00

7040625 04/25/87 Saturday 9am to 6pm
40 Gas Works Park Kite Fly-in
Kidsday Rosanna Bellotti 3008 3rd Ave W. 98119
500 0.00 0.00

7044025 04/25/87 Saturday 1pm to 4pm
74 Waterfront Park Religious Outreach
Fishermen for Christ Emil Vinberg PO Box 5442 Lynnwood, WA 98046
125 15.00 25.00

7044127 04/27/87 Monday 7pm to 8:30pm
75 Myrtle Edwards Park Rally Candle Light Vigil
ACES Dorothy Mack 8522 Corliss Ave N. 98103
150 15.00 0.00

7051706 05/06/87 Wednesday & 05/07 Thurs. 12noon to 7pm
96 Washington Park Arboretum Visitors Fundraiser Plant Sale
Arboretum Foundation Janet Patrick 2650 120th NE Bellevue, WA 98005
2000 0.00 0.00

7053809 05/09/87 Saturday 2:30pm to 4pm
179 Denny Park Rally
Nat. Vietnam Veterans Coalition Michael Booth PO Box 7552 Bonney Lake WA 98390
200 15.00 0.00

7051510 05/10/87 Sunday 11am to 4pm
94 Green Lake Path & Woodland Park #6 Rally & March
Mothers Day Peace Coalition Louise Chernin\Claire Skillit 9122 45th SW Seattle, WA 98136
100 15.00 0.00

7051416 05/16/87 Saturday 1pm to 2pm
93 Betty Bowen/Marshall Viewpoint Rally
Capt. G. Vancouver Bicentennial Ralph Umbarger 3011 Rainier Bank Tower 98101
75 15.00 0.00

7051925 05/25/87 Monday	9am to 12:30pm		
98 Waterfront Park			Rally Memorial Service
Veterans Memorial Association	Nellie Grewe		4245 8th Ave NE 98105
250	15.00	25.00	

7063806 06/06/87 Saturday	9am to 12noon		
222 Jose Rizal Park			Rally
Rizal Park Preservation Society	Vic Bacho		10041 39th NE Seattle, WA 98125
200	15.00	0.00	

7060221 06/21/87 Sunday	12noon to 6pm		
108 Gas Works Park			Concert Food Drive
Peace Movement Northwest	Don Glenn		333 N. 74th Seattle, WA 98103
500	15.00	0.00	

7063824 06/24/87 Wednesday	2pm to 4pm		
251 Waterfront Park			Religious Concert
Hoffmantown Baptist Church	Donald W. Jordan		2335 Wyoming Blvd. Albuquerque, NM 87112
150	15.00	25.00	

7063528 06/28/87 Sunday	10am to 5pm		
244 Volunteer Park			Rally Gay Rights
Freedom Day Committee	George Bakan		700 A E. Pike St. 98122
20000	15.00	80.40	

7072804 07/04/87 Saturday	12noon to 6pm		
224 Volunteer Park			Religious Concert
Rainier Temple/KNHC	Troy Wright		3001 22nd Ave S. Seattle, WA 98144
250	15.00	25.00	

7070612 07/12/87 Sunday	12noon to 6pm		
127 Woodland Park			Concert Food Drive
Peace Movement Northwest	Don Glenn		333 N. 74th Seattle, WA 98103
500	15.00	0.00	

7071512 07/12/87 Sunday	1pm to 3pm		
136 Green Lake Park			Religious Service
Calvary Chapel	Bill Schutte		1305 NE 45th #210 98105
200	15.00	0.00	

7073525 07/25/87 Saturday	12noon to 3pm		
257 Victor Steinbrueck Park			Rally Indians Rights
	Fred Sam Jameson		P.O. Box 19313 Seattle, WA 98119
100	15.00	25.00	

7075625 07/25/87 Saturday	10am to 12noon		
289 Freeway Park			Rally Political
	Congressman Donald Swift		
200	0.00	0.00	

7070726 07/26/87 Sunday	12noon to 6pm		
128 Volunteer Park			Concert Food Drive
Peace Movement Northwest	Don Glenn		333 N. 74th Seattle, WA 98103
500	15.00	0.00	

7074328 267	CANCELLED 07/28/87 Tuesday thru 8/4 Tuesday Atlantic City Park	12noon to 8:30p Religious Revue 1 1102 31st Ave		
500	Pastor A. Adams	15.00	0.00	
<hr/>				
7080103 143	08/03/87 Mon. thru Fri 8/7/87 8/9 Spruce St. Park & Seward Park	6-8pm 10am-8pm		Religious Outreach Activities
New Hope Baptist Church	Maggie Majors	15.00	0.00	11231 57th Ave S. Seattle, WA 98178
250				
<hr/>				
7084405 308	08/05/87 Wednesday Seward Park	10am to 5pm		Concert
Union Gospel Mission Youth Services	Gerry Autry	15.00	25.00	P.O. Box 202 Seattle, WA 98111
400				
<hr/>				
7080209 144	08/09/87 Sunday Gas Works Park	12noon to 6pm		Concert Food Drive
Peace Movement Northwest	Don Glenn	15.00	0.00	333 N. 74th Seattle, WA 98103
500				
<hr/>				
7083309 273	08/09/87 Sunday Gas Works Park	3pm to 5pm		Rally Nuclear Bombing of Hiro/Naga
Stephen Fisher		15.00	0.00	1802 12th Ave #10 98122
100				
<hr/>				
7084616 310	08/16/87 Sunday Magnuson Park	4:30am - 12noon		Religious Festival Services
Harmonic Convergence Committee	Phyllis Grimes	15.00	42.50	24817 SE 165th Issaquah, WA 98027
500				
<hr/>				
7083121 271	08/21/87 Friday Waterfront Park	11am to 2pm		Concert
Sea-Kobe Affiliation Committee	Andrew Frank	15.00	25.00	2714 9th Ave W. Seattle, WA 98119
250				
<hr/>				
7085021 324	08/21/87 Friday Victor Steinbrueck Park	4pm to 5pm		Rally Political Speech
Norm Dicks Headquarters	Tim Thompson	0.00	0.00	621 Pacific Ave Suite 201 Tacoma, WA 98402
250				
<hr/>				
7080323 145	08/23/87 Sunday Volunteer Park	12noon to 6pm		Concert Food Drive
Peace Movement Northwest	Don Glenn	15.00	0.00	333 N. 74th Seattle, WA 98103
500				
<hr/>				
7083326 272	08/26/87 Wednesday Woodland Park Area #2	5pm to 9pm		Rally Picnic
NOW	Randi Solinsky	15.00	25.00	701 NE Northlake Way 98105
100				
<hr/>				
7101009 363	10/09/87 Friday Green Lake Path	10am to 2pm		Walk
American College of Nurses/Midwives	Rhonda Busby	15.00	0.00	12307 16th Ave NE Seattle, WA 98125
200				

7101624	10/24/87 Saturday	1pm to 3pm	Walk-a-thon
374	Green Lake Park		4425 Phinney Ave N. #306 98103
Comm. in Solidarity with El Salvador Larry Breslaver			
400		15.00 0.00	

7111114	11/14/87 Saturday	11am to 12noon	Rally
387	Freeway Park		PO Box 529 600 Pine St. 98122
Emergency Coalition Against Contra Gary Moresky			
20		15.00 0.00	

7120427	12/27/87 Sunday	2pm to 3pm	Rally Demonstration
396	Victor Steinbrueck Park		P.O. Box 25561 Seattle, WA 98125
Afghan Help Organization Aziz R. Rahmani			
40		15.00 0.00	

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING, SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 684-8200

DOUGLAS N. JEWETT, CITY ATTORNEY

February 23, 1988

Hon. Delores Sibonga
Chair, Parks and Public Grounds Committee
The Seattle City Council

Re: An Ordinance governing the permit system for the use of park and recreational facilities, setting guidelines, and adding new sections to Chapter 18.12 of the Seattle Municipal Code

Dear Ms. Sibonga:

This letter responds to your memorandum, dated February 19, 1988, relating to the letter, dated August 11, 1987 from Peter T. Jenkins, Esq. for the American Civil Liberties Union of Washington ("ACLU-W"). The ACLU-W letter requests two changes to the proposed ordinance: (1) the requirement of a permit for a special use that differs in kind from the use and enjoyment of a park by the general public (proposed SMC 18.12.042 E); and (2) authorization to the Superintendent of Parks and Recreation to require insurance for assemblies and other gatherings in parks (proposed SMC 18.12.045).

(1) The Special Use Provision

Our letter to the ACLU-W, dated July 21, 1987, had explained the purpose of SMC 18.12.042 E as follows:

"Subsection E was intended to require a permit for special uses that differ in kind from the use and enjoyment of the park by the general public. Unfolding events often develop instances similar to the type of activities within the other categories, but not quite within them. Subsection E was not intended to cover a spontaneous speech, dance, or making music by an individual or small group for their personal enjoyment."

The ACLU-W in its August 11, 1987 letter, restated its earlier comment as follows:

RECEIVED

FEB 23 1988

DOLORES SIBONGA
SEATTLE CITY COUNCIL MEMBER

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"This provision is extremely vague and could be construed to require a permit for virtually any unusual activities conducted within a park. For example, a group sing-along, or a spontaneous speech by a visiting politician could be deemed activities beyond the normal use of the park and therefore prohibited without a permit."

The examples in the ACLU-W comment are not events that differ in kind from uses enjoyed by the general public. The term, "in kind," contrasts with "in degree." "Differ in kind" denotes a dissimilarity so large as to constitute a separate classification; "differ in degree" relates to intensity of use.

The phrase "differ in kind from uses by the general public" commonly appears in cases involving obstructions or nuisances in the street, street vacations, and uses made without a permit, e.g., Wilson v. West & Slade Mill Co., 28 Wash. 312, 68 Pac. 716 (1902); Young v. Nichols, 152 Wash. 306, 278 Pac. 159 (1929); State ex rel Sohlman v. Oldham, 156 Wash. 484, 287 Pac. 680 (1930); Olson v. Jacobs, 193 Wash. 506, 76 P.2d 607 (1938). In the park setting, uses that differ in kind from the general public's use would include parachute landings and other types of stunts; drilling under a park; placing survey markers for a nearby development; and moving heavy equipment through a park to get to the adjoining property.

Placing our correspondence with the ACLU-W in the ordinance file will give color to the phrase and prevent its misinterpretation in the manner feared by the ACLU-W.

(B) Requiring Insurance with Park Permits

Section 18.12.045 empowers the Superintendent to condition a permit or impose such conditions as necessary to protect the health, safety and welfare of the public and/or the park; to avoid or limit unnecessary interference with other uses or users of the park; and to require the user to leave the area under permit in a condition after the activity or event as it was beforehand; and for this purpose, to require the user to furnish public liability and property damage, naming the City as an additional insured,

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in such amounts as reasonably necessary to provide recompense for personal injury or death or property damage to a member of the public as a result of the event or activity; to execute an indemnity and/or hold harmless agreement; and/or make a reasonable security deposit or provide a bond. The ACLU-W proposes that the ordinance, instead, forbid the Superintendent from asking for insurance, an indemnity or hold harmless agreement, or bond or deposit from anyone proposing to use a park "for assembly, petitioning, or other expression protected by the United States and/or Washington State Constitutions." It states that there is little likelihood that any municipality will be held liable for injuries occurring from special events on public property.

Our experience has shown that accidents and injuries occur at public events in parks and on public grounds as a result of an activity or event. The event or performance attracts crowds. Crowds and crowding increase the opportunities for an accident or injury because:

- (a) There are more people who may slip or fall or be hurt;
- (b) Such a crowd of people creates more congestion. Their sight lines are diminished. The performance attracts or holds their attention away from personal safety and reduces awareness of other perils. Noise may distract people or the sound obscure warnings. People have less freedom of movement to get out of the way. With crowding, people are more likely to stray off pathways and go into unfamiliar areas.
- (c) More people are present to cause accidents.
- (d) The performance, itself, may cause injury, e.g., the misfired cannon on Bastille Day, or a performer may fall off the stage or slip on the stage. Food or beverages may be sold or consumed, e.g., the food may cause upset to those consuming it, or the litter may fall to the ground to cause a slip and fall.

Those responsible for an activity or event can plan ahead to reduce the risk of accident and at common law may be liable for failure to exercise reasonable care with respect to their activities and the premises under their control.

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Requiring insurance serves dual functions: it makes the user more safety conscious and it provides financial responsibility in the event someone is injured. Some insurance carriers provide advice and guidance to policy holders about the possible sources of accidents and how to reduce injury. With major events, insurance carriers have made a special visit the scene.

In the last decade, the City has sent letters to Seafair, Inc. and to Bite of Seattle tendering claims for alleged accidents or injuries at the hydroplane races and the Bite, respectively. It has tendered claims to insurance carriers for accidents on activities under street use permits and at the Seattle Center. With rock concerts, claims for injuries have been filed from a person who fell from a rafter; from a member of the audience who was hurt by an object thrown by another; from a victim of an assault, who claimed inadequate security; and from a person who, while standing in line, had a bollard fall on his foot (the bollard supported a rope used for guiding lines and was tipped over by a surge of the crowd). Without insurance, the City would have been defending all these claims at public expense. The City of Tacoma has also been reported to have received claims for injuries at rock concerts occurring at its Tacoma Dome.

The utility of requiring insurance is shown by the widespread practice of municipal governments in the United States to require it. Owners of auditoria and places for hire generally either require the user to provide liability insurance or charge a rental so high that the owner can acquire insurance and pay the premium expense. By way of comparison, the City in SMC § 6.294.140 requires the licensee of a dance hall to provide public liability insurance naming the City as an additional insured. For more information about potential risks and City practices, you may consult the City's Risk Manager, Leonard Bois.

Bonds and damage deposits are required to provide for restoring the premises. They are measured by the amount of the damage likely to occur. A damage deposit gives the user a positive financial incentive for making repairs. In contrast, a threat of a lawsuit by the City afterwards acts as a negative penalty for failure to act. Experience shows

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that the user's desire to get the deposit back is a more effective motivator and that processing a deposit has many administrative advantages for the City over the hassle of a lawsuit.

The last paragraph of the proposed ordinance addresses the concern of the ACLU-W about chilling the rights of petition, assembly and free expression guaranteed by the United States and Washington Constitutions. It provides as follows:

"The terms and conditions of a permit (including providing insurance and/or security deposit) shall not infringe upon rights of petition, assembly, or free expression protected by the First Amendment of the United States Constitution and/or Article I, Sections 3, 4 and 5 of the Washington Constitution. If an applicant asserts that a term or condition proposed by the Superintendent infringes upon a constitutional right, the Superintendent shall have the burden of showing that the proposed term or condition is a reasonable restriction on the time, place and manner of exercising the right and is valid."

The burden falls on the Superintendent, rather than the applicant, to show that the insurance and/or bond of security deposit is reasonable and valid.

The ACLU-W objects that delegating the authority to set amounts and to grant waivers to the Superintendent vests too much discretion in him because "the Superintendent may be subject to biases in waiving insurance requirements for political rallies conducted by his or her own party and religious gatherings representative of his or her own beliefs." Our response is threefold:

- (1) The ordinance, itself, contains guidelines in the statement of purpose for the insurance, the amount, the citation of the rights and constitutional sections and the legal standard ("reasonable restriction on the time, place and manner of exercising the right") and the allocation of the burden of proof;

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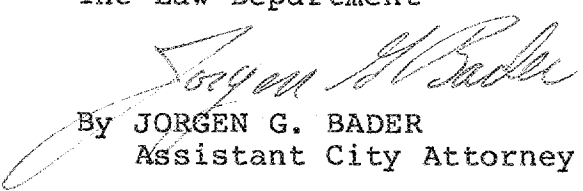
- (2) The Superintendent is the appropriate official for making such decisions. Under Article XI, Section 1 of the Charter of The City of Seattle, the Superintendent has the "responsibility for the management and control of the park and recreation system of the city;" and
- (3) Experience over the last decade has not shown any abuse of discretion with respect to political rallies or religious gatherings. Several years ago, the Superintendent waived the insurance requirement and the damage deposit as to the Peace Movement Northwest, an organization that presented rock-and-roll music performances to convey its messages; the issue in dispute then was the deposit or fee for noise monitoring.

Neither our department nor the Superintendent anticipate that the enactment of this ordinance would make the Park Department's practices more restrictive.

Finally, last year, either the ACLU-W or a member of your staff had asked that the last word "valid" be replaced by the word "necessary." The explanation given was that "valid" carries legal overtones while "necessary" is an administrative judgment and by coming after "reasonable restriction" tends to be more emphatic. We viewed this amendment as a matter within your discretion and took no position on it. We presume that this proposed amendment was the last effort made to address the ACLU concerns.

Very truly yours,

The Law Department


By JORGEN G. BADER
Assistant City Attorney

JGB:bjw

cc: Superintendent of Parks
ACLU-W c/o Kathleen Taylor
Peter Jenkins, Esq.
Jerry Sheehan, Esq.
Risk Manager

LAW OFFICE OF
PETER T. JENKINS
Fourth & Blanchard Building
2121 Fourth Avenue Suite 2300
Seattle, Washington 98121
(206) 443-9586

[Handwritten signature]
COPY RECEIVED

AUG 12 1987

Douglas N. Jewett
CITY ATTORNEY

August 11, 1987

The Hon. Jeanette Williams
Chair, Parks & Public Grounds Committee
Seattle City Council
Seattle Municipal Building
Seattle, WA 98104

Re: Park Permit System/Proposed Park Code Changes

Dear Ms Williams:

I am a cooperating attorney with the American Civil Liberties Union of Washington authorized to represent the position of the ACLU-W with respect to the proposed park code changes offered by the Seattle Parks Department. This letter is in response to the letter to yourself dated July 21, 1987, from Mr. Jorgen G. Bader of the City of Seattle Law Department regarding the draft changes.

The Law Department has been helpful in working with the ACLU-W to improve the language of the proposed changes. Unfortunately, there are still two key points remaining in dispute. The first point relates to proposed subsection E of section 18.12.042 in the draft ordinance. This provides that the Parks Department may require a permit for the following activity:

Making any use of a park or recreational facility for an event that differs in kind from the use and enjoyment of the park or recreational facilities by the general public of the premises.

This provision is extremely vague and could be construed to require a permit for virtually any unusual activities conducted within a park. For example, a group sing-along, or a spontaneous speech by a visiting politician could be deemed activities beyond the normal use of the park and therefore prohibited without a permit. Even if permits were not actually required, the possibility of the requirement imposes a chilling effect on expression protected under the First Amendment of the United States Constitution and Article 1, Sections 4 and 5 of the Washington Constitution.

Admittedly, it is difficult to draw a precise line between

activities that may be compelled to obtain a permit and those that should not. However, the Parks Department has previously made adequate good faith attempts at providing such written definitions. These are set forth in the Department's written Policies and Procedures under section 5.7, defining special events, and section 5.3, defining normal use. We submit that it is appropriate to include these definitions within subsection E at this point. (Indeed, it is mystifying as to why the Parks Department is proposing to discard its prior attempts at defining activities that require a permit.)

Thus, the ACLU proposed subsection E based on the existing Policies would authorize requiring a permit for the following activities:

Making any use of a park or recreational facility for a special event, which is defined as any activity which precludes normal public use of park property and/or requires labor, materials, or equipment support service beyond that provided in the budget for normal use. Normal use is considered to be any scheduled or unscheduled use of a facility occurring on a one-time, seasonal or recurring basis in accordance with the intended function of that facility.

We urge that this language be adopted, rather than the city's proposal, because it is more precise and therefore, less likely to deter protected expression. At the same time, it gives sufficient discretion to the Superintendent to require a permit for appropriate events.

The other major point of dispute relates to the requirements of insurance, indemnity agreements, deposits, and other financial guarantees from proposed park users. In his letter of July 21, Mr. Bader maintains that these financial guarantees are justified by certain examples of accidents that have occurred. However, the examples cited by Mr. Bader did not occur on park property, and even if they had, by their very nature there would have been little likelihood of Park Department liability. A national study on municipal liability for permitting free expression in public areas established that there is little evidence that municipalities are being held liable for damages from special events held on public property. This national study is described in the enclosed copy of my earlier letter of August 13, 1986 to your committee. This letter sets out in greater detail the arguments against insurance, indemnity agreements, and deposits. The gist

The Hon. Jeanette Williams
August 11, 1987
Page 3

is that there is no rational basis for difficult-to-obtain financial guarantees for users proposing protected activities in Seattle parks. The social and cultural losses caused by unnecessary financial guarantee requirements will be excessively high, because valuable expression will be deterred.

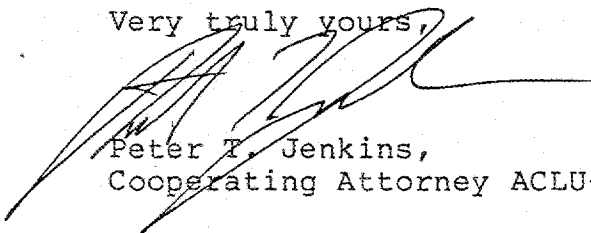
Mr. Bader suggests that the policy of the department is to waive insurance requirements for "the traditional political rally or religious gathering". The ACLU-W submits that the Superintendent of Parks is neither qualified nor appropriate to determine what constitute "traditional political rallies or religious gatherings". Certainly, the Superintendent may be subject to biases in waiving insurance requirements for political rallies conducted by his or her own party and religious gatherings representative of his or her own beliefs. There are significant constitutional infirmities in delegating this discretion to the Park Superintendent.

As previously proposed to the Law Department, the ACLU-W submits that the language in Section 18.12.045 necessary to protect the public's freedom of expression is as follows:

No insurance, indemnity or hold harmless agreements, bonding or deposits will be required from parties proposing to use a city park for assembly, petitioning, or other expression protected by the United States and/or Washington State Constitutions.

Thank you for considering these comments on the proposed changes. We look forward to working with you and your committee in the future to improve the proposals to reflect constitutional requirements.

Very truly yours,



Peter T. Jenkins,
Cooperating Attorney ACLU-W

PTJ:sa
JL0509
Enclosure

cc: ✓ Mr. Jorgen Bader
Kathleen Taylor, ACLU
Mr. Jerry Sheehan, ACLU

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

July 21, 1987

Hon. Jeanette Williams
Chair, Parks and Public Grounds Committee
The City Council
The City of Seattle

Re: Park Permit System
Proposed Park Code Amendments

Dear Ms. Williams:

We are forwarding with this letter an ordinance governing the permit system for the use of park and recreational facilities, setting guidelines for imposing terms and conditions, and authorizing the refund of fees for cancelled events and return of deposits.

We sent a draft copy of the proposed ordinance to the American Civil Liberties Union for comment and received a thoughtful letter from one of its volunteer attorneys. A copy of our correspondence is also enclosed.

The American Civil Liberties Union and our office take very different views on requiring insurance and indemnity agreements in connection with permits. The draft ordinance in Section 18.12.045 empowers the Superintendent to require a park user to furnish the City public liability and property damage insurance as a condition for using park premises. The following paragraph indicates that the term may not infringe upon First Amendment Rights and places the burden on the Department to show that the proposed term is a reasonable restriction on the time, place and manner of exercising the right. The ACLU on page 2 of its letter recommends this sentence forbidding insurance, indemnity, or damage deposits with assemblies, petitioning, or other protected expression:

"No insurance, indemnity or hold-harmless agreements, bonding, or deposits will be required of parties proposing to use a city park for assembly, petitioning, or other expression protected by the United States and/or Washington State Constitutions."

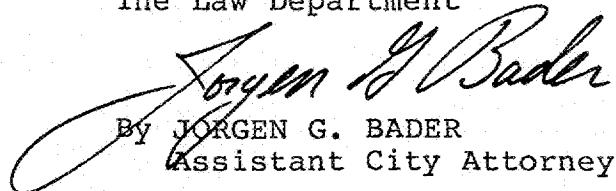
Hon. Jeanette Williams
July 21, 1987
Page 2

Our recommended approach invokes analysis with each application of the type of activity, the risks of injury or property damage, and the impact upon protected activity. Our experience has shown that planned events often involve a range of activities. For example, a decade ago the Pioneer Square merchants sponsored a Bastille Day celebration, which climaxed with the firing of a cannon; the cannon shot crushed a spectator's leg leading to an amputation of the leg, and the City and the merchants' liability insurance carrier had to make a settlement with the spectator now maimed for life. The gathering had pageantry and the festivities of the occasion; it had its serious side in speeches and in the commemoration; and it had spectacle in the cannon firing--a re-creation of history. A few years ago, a touring troop of Japanese dancers, caked in white powder made dance movements while dangling upside down with their feet tied by a rope from the parapets of the Mutual Life Building before a lunchtime crowd that filled Pioneer Square; the rope of one of the dancers broke; and an artistic expression intended as a celebration of life resulted in a tragic death. The Park Department commonly waives insurance requirements for the traditional political rally or religious gathering and has done so for concerts sponsored by non-profit organizations without commercial backing or paid admission.

We trust that this ordinance fulfills your request by letter, dated June 8, 1987, for alternate language to the sections relating to permits deleted before the recent adoption of the Park Code Amendments.

Yours very truly,

The Law Department


By JORGEN G. BADER
Assistant City Attorney

JGB:bjw
encl.

cc: Peter T. Jenkins, Esq.
Superintendent of Parks & Recreation

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

July 21, 1987

Peter T. Jenkins, Esq.
2121 Fourth Avenue, Suite 2300
Seattle, Washington 98121

Re: Park Permit System/Proposed Park Code Amendments

Dear Mr. Jenkins:

In response to your thoughtful letter, dated July 15, 1987, we reconsidered our draft ordinance governing the permit system for the use of park and recreational facilities and discussed your letter and the draft ordinance with the Park Department. We have made several revisions to reflect your comments.

The Park Department opposes an ordinance change that would allow individuals to put up signs, posters, or notices in parks without advance departmental approval. The practice could become as prevalent as posting signs on utility poles and damage trees and mar the appearance of the parks. The Department's practice has been to consider such requests at the time an applicant seeks a permit and cover the subject in a single permit for both the event and placing of an announcement on site. An additional sentence has been added to Section 18.12.042.

Subsection E was intended to require a permit for special uses that differ in kind from the use and enjoyment of the park by the general public. Unfolding events often develop instances similar to the type of activities within the other categories, but not quite within them. Subsection E was not intended to cover a spontaneous speech, dance, or making music by an individual or small group for their personal enjoyment. Subsection E was revised to address your concern.

Section 18.12.045 was revised to add a reference to Article I, Section 5 of the Washington Constitution.

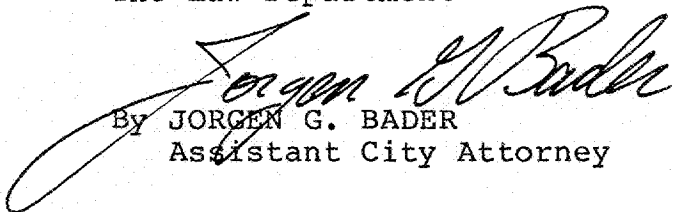
Peter T. Jenkins, Esq.
July 21, 1987
Page 2

We disagree with your analysis with respect to public liability and property damage insurance. When supplied, such insurance assures members of the public, who may be injured at an event, that there is a responsible source capable of making compensation for out-of-pocket expenses (such as medical and hospitalizing costs, home care, etc.), injury and loss of earning capacity, and pain and suffering, among other elements. It goes beyond just protecting the City's finances. In Houston Peace Coalition v. Houston City Council, 310 F.Supp. 457 at 462-463 (D. Tex. 1970), the District Court commented that it is "certain" a city may require an applicant for a parade to obtain general liability insurance, but voided the ordinance because the ordinance lacked sufficient standards for city officials in setting the amount. The draft ordinance has more precise standards than the Houston ordinance.

Thank you again for your very helpful comments.

Yours very truly,

The Law Department



By JORGEN G. BADER
Assistant City Attorney

JGB:bjw

cc: Superintendent of Parks and Recreation

Hon. Jeanette Williams

LAW OFFICE OF
PETER T. JENKINS
Fourth & Blanchard Building
2121 Fourth Avenue Suite 2300
Seattle, Washington 98121
(206) 443-9586

COPY RECEIVED

JUL 16 1987

Douglas N. Jewett
CITY ATTORNEY

July 15, 1987

Mr. Jorgen G. Bader
Assistant City Attorney
Seattle Municipal Building
Seattle, WA 98104

Re: Park Permit System/Proposed Park Code Amendments

Dear Mr. Bader:

Kathleen Taylor of the American Civil Liberties Union of Washington forwarded to me your draft proposed ordinance revising the permit system for use of park and recreational facilities. On behalf of the ACLU-W, I submit the following comments and suggestions:

With respect to section 18.12.042, the first comment relates to subsection B regarding the posting of any signs, posters, or notices. The ACLU suggests that there should be an exception to this permit requirement to the following effect: "Except such temporary signs, posters, or notices that are reasonably related to a permitted activity". The concern here is that the permit requirement will unnecessarily restrict information that is most appropriate in temporary written form, for example: notices regarding picnics and athletic banners.

The next concern is posed by subsection E. This requires a permit for "making any use of a park or recreational facility that differs in kind from the use and enjoyment of a park or recreational facilities by members of the public on the premises". The vagueness of this provision is glaring. It conceivably could be interpreted to require a permit for constitutionally protected activities such as speech, dance, or music, thus eliminating spontaneous engagement in these activities. This subsection must be deleted.

With respect to Section 18.12.045, we appreciate your attempt to clarify the policies and procedures with respect to insurance and other financial requirements for constitutionally protected activities. It is laudable that the provision mentions Article I of the Washington Constitution as a source of fundamental protections beyond those guaranteed by the First Amendment of the United States Constitution. I should point out that there appears to be a typographical error in the draft, because sections 4 and 5 of Article I establish the pertinent rights, not section 3. This mistake needs to be addressed.

Jorgen G. Bader
July 15, 1987
Page 2

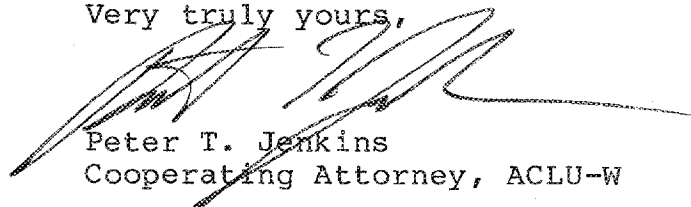
The critical substantive constitutional problem with the proposal is the concept that the Superintendent may require financial guarantees for those who propose to engage in constitutionally-protected activities, so long as the Superintendent shows that the requirement is a "reasonable ... time, place and manner [restriction]." The ACLU position is that insurance, indemnity agreements, deposits, bonds and other financial guarantees should never be required for constitutionally protected activity. The grounds for this position are set forth in the August 13, 1986 letter from myself on behalf of the ACLU to the Committee on Parks and Public Grounds, regarding the then-proposed park code revisions. A copy of this letter is enclosed for your information. There appears to be no objective justification for these financial guarantees, and they have been deemed unduly burdensome, therefore unconstitutional, in previous cases. Contrary to implication of the provision, financial guarantee requirements are, ipso facto, not "time, place or manner" restrictions. The second paragraph of section 18.12.045 should be changed to provide as follows:

No insurance, indemnity or hold-harmless agreements, bonding, or deposits will be required by parties proposing to use a city park for assembly, petitioning, or other expression protected by the United States and/or Washington State Constitutions.

By way of further comment, we suggest it is critical that any new ordinance provide that new written materials be prepared for public distribution which fully explain the new provisions.

Thank you for the opportunity to comment on the proposal. We look forward to working with you in the future to improve the proposed ordinance on the matters outlined above. Please give me a call if you have any questions.

Very truly yours,



Peter T. Jenkins
Cooperating Attorney, ACLU-W

PTJ:cmc
JL0469
encs

cc: Kathleen Taylor
Gerry Sheehan, ACLU

REC'D OMB AUG 26 1987

Seattle
Department of
Parks and Recreation

836689



Charles Royer, Mayor

Walter R. Hundley, Superintendent

MEMORANDUM

Date: August 24, 1987

To: Jeanette Williams, Chair
City Council Parks and Public Grounds Committee

Via Mayor Charles Royer

Attention: Jim Ritch, Director, OMB

From: Walter R. Hundley *WRH*

We are forwarding to you a proposed ordinance governing the permit system for the use of park and recreational facilities, setting guidelines for imposing terms and conditions, and authorizing the refund of fees for cancelled events and return of deposits.

This is the section of the Park Code that was held in abeyance when the Code was passed in May, 1987. We were asked to do some additional review with the Law Department and A.C.L.U. which has taken place. You received a communication in July from Jorgen Bader of the Law Department with a copy of communication from Peter Jenkins, Esq. of A.C.L.U.

We feel the changes have improved the legislative request in terms of completeness and fairness. We are now asking to have this proposed Park Code amendment again placed on the agenda of the Parks and Public Grounds Committee.

Thank you for your help and patience in this matter.

WRH:cgj

Attachments

LEGISLATION REQUEST SUPPORTING INFORMATION

In conformance with the City of Seattle Operating Procedure 100-014 and 200-001 the following information is submitted.

TITLE

An ordinance to amend the existing Park Code (Ordinance 106615:SMC18:12) by adding a section.

STATEMENT OF OBJECTIVES

This legislation has the following objectives:

Establish in the park code a permit system for the use of park and recreation facilities, setting guidelines for imposing terms and conditions, and authorizing the refund of fees for cancelled events and return of deposits.

FISCAL REQUIREMENT

No additional fiscal requirements are anticipated as a result of this legislation.

EVALUATION CRITERIA

The Department of Parks and Recreation works closely with citizens and other public agencies, especially the departments of Police, Health, Fire, and Licensing (Animal Control) to provide safe clean and attractive parks and recreation facilities. Provisions of the Park Code along with other related city codes and applicable state laws provide the basis for enforcing regulations and ensure park security and sanitation.

When the revised Park Code was adopted in May 1987 this section was held in abeyance for further review by the law department in this legislation and attachments.

Recognizing that any regulations and limitations on the use of parks to some extent may limit the freedom of individuals in their use of public property, the Parks and Recreation Department has consulted the Law Department to make every effort to preserve individual rights consistent with the need to preserve and protect public safety and property and to provide for the common enjoyment of all park users.

ALTERNATIVE

The alternative to passage of this section is to continue under the Superintendents rulemaking authority.

CONTACT PERSON

C.M. Girtch, 684-8011

August 21, 1987

City of Seattle

Executive Department-Office of Management and Budget

James P. Ritch, Director
Charles Royer, Mayor



August 27, 1987

#9521
Parker
Jewett
OMB

The Honorable Douglas Jewett
City Attorney
City of Seattle

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Parks

SUBJECT: An Ordinance governing the permit system for the use of parks and recreational facilities, setting guidelines, and adding new sections to Chapter 18.12 of Seattle Municipal Code.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation directly to your office for review and drafting.

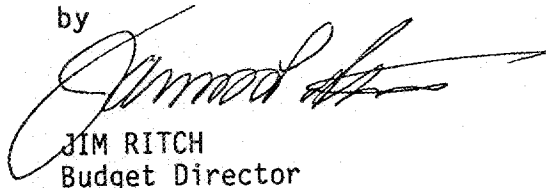
After reviewing this request and drafting appropriate legislation:

- (X) File the legislation with the City Clerk for formal introduction to the City Council as an Executive Request.
- () Do not file with City Council, but return the proposed legislation to OMB for our review. Return to _____.

Sincerely,

Charles Royer
Mayor

by


JIM RITCH
Budget Director

JR/ts/fb

Enclosure

cc: Superintendent, Parks

C-375-X

Affidavit of Publication

STATE OF WASHINGTON KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 113860

was published on March 17, 1988

R. Spicigga
Subscribed and sworn to before me on

March 17, 1988

Yvonne Summers
Notary Public for the State of Washington,
residing in Seattle.

City of Seattle

ORDINANCE 113200

AN ORDINANCE governing the permit system for the use of park and recreational facilities, setting guidelines, and adding new sections to Chapter 18.12 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. There are added to Seattle Municipal Code Chapter 18.12 (Ordinance 106613, as amended) three new sections as follows:

Section 18.12.043 PERMIT SYSTEM

The Superintendent may establish a permit system and require a permit for:

A. Reserving any room or part of a community center, athletic field, picnic facility, stage, or other defined area of a park for a certain time or series of times, and granting the exclusive use thereof during the time reserved.

B. Posting any signs, posters or notices, placing or erecting any structure or obstruction of any kind within a park, whether temporary or permanent, engaging in any competitions involving a vehicle, boat, aircraft, or animal, or launching or landing aircraft or airborne conveyance, or cutting or removing any tree or plant material.

C. Making any improvement to or in a park or constructing a public work.

D. Conducting a commercial activity, using any outdoor electrical power outlet, or laying cables or extending wires in or over a park, or using any park or facility during the hours it is closed to the public.

E. Making any use of a park or recreational facility for an event that differs in kind from the use and enjoyment of the park or recreational facilities by the general public of the premises.

No permit is required of park employees acting in the scope and course of their duties. Exemptions may be made for attending owners, who maintain park boulevards, with respect to the area maintained for concessionaires as to the area under concession; and as to governmental officials acting under authority of law. Issuance of a permit shall be subject to payment of such fees or charges as required by ordinance or authorized by resolution of the City Council.

A permit for an event may authorize the placing of temporary signs, posters or notices reasonably related thereto.

All permits shall be wholly of a temporary nature, shall vest no permanent right, and may be revoked upon thirty days' notice or, if the permit so states,

upon shorter notice.

Section 18.12.045 TERMS AND CONDITIONS

The Superintendent may condition the permit or impose such terms and conditions as appropriate to protect the health, safety and welfare of the public and/or the park; to avoid or limit unnecessary interference with other uses or users of the park; to minimize disturbance of the surrounding neighborhood; and to require the user to leave the area under permit in a condition after the activity or event as it was beforehand. For this purpose, the Superintendent may require the user to furnish public liability and property damage insurance, naming the City as an additional insured, in such amounts as reasonably necessary to provide recompense for personal injury or death or property damage to a member of the public as a result of the event or activity; execute an indemnity and/or hold harmless agreement; and/or make a reasonable security deposit or provide a bond.

The terms and conditions of a permit (including providing insurance and/or security deposit) shall not infringe upon rights of petition, assembly, or free expression protected by the First Amendment of the United States Constitution and/or Article I, Sections 3, 4 and 5 of the Washington Constitution. If an applicant asserts that a term or condition proposed by the Superintendent infringes upon a constitutional right, the Superintendent shall have the burden of showing that the proposed term or condition is a reasonable restriction on the time, place and manner of exercising the right and is valid.

Section 18.12.047 REFUND OF DEPOSITS AND FEES

The Superintendent is authorized to make refunds of fees upon timely cancellation of an event or activity and to return all or any portion of any security deposit when no longer needed or after costs that