

**ORDINANCE NO 1-38**

**AN ORDINANCE ESTABLISHING REGULATIONS FOR PARADES AND  
PUBLIC ASSEMBLIES.**

Purpose:

A. It is the policy of the Borough of Mercersburg that the right of assembly and expression enumerated in the First Amendment of the United States Constitution be protected and the safety of participants and others be maintained while inconvenience to the general public and disruption of public services is minimized.

B. In order to regulate competing uses of public forums and to provide Borough officials with specific and objective standards for issuance or denial of permits, a comprehensive permit scheme for parades and public assemblies shall be adopted.

C. The Borough of Mercersburg has a significant governmental interest in protecting the health, safety and welfare of the general public and preserving the public order while preserving traditional public forums, especially those activities that do not interfere with the normal flow of vehicular and pedestrian traffic.

D. The Borough of Mercersburg has a significant governmental interest in maintaining the free flow of traffic on public streets and sidewalks, preserving access to public places and buildings and protecting public and private property.

**ARTICLE I:           DEFINITIONS.**

A. "Borough Council" the elected governing body of the Borough of Mercersburg consisting of seven council members and the Mayor.

B. "Chief of Police" means the Chief of Police or his/her designee.

C. "Parade" means any march, demonstration, procession or motorcade consisting of persons, animals, or vehicles or a combination thereof upon the streets, parks, sidewalks or other public grounds within the Borough that reroutes the normal flow or regulation of pedestrian or vehicular traffic upon the streets and sidewalks.

D. "Parade or public assembly permit" means a permit as required by this Ordinance.

E. "Person" means any person, group, firm, partnership, association, corporation, company or organization of any kind.

F. "Public assembly" means any meeting, demonstration, picket line, rally, race, festival or gathering of Twenty (20) or more persons for a common purpose as a result of prior planning that occurs upon the streets, parks, sidewalks or other public grounds.

G. "Sidewalk" is an area or way set aside or open to the general public for purposes of pedestrian traffic, whether or not it is paved.

H. "Street" is any place or way set aside or open to the general public for purposes of vehicular traffic, including any alley, park row, right of way, or median strip thereof.

**ARTICLE II: PERMIT REQUIRED**

No person shall, without a permit, engage in or conduct a parade or public assembly involving more than twenty individuals, as defined in this chapter, unless such activity is an exception identified in Article III. A violation of this section is an infraction subject to the penalties imposed in Article XI in this Chapter.

**ARTICLE III: EXCEPTIONS**

This chapter shall not apply to the following:

- A. Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
- B. A governmental agency acting within the scope of its functions;
- C. Spontaneous events occasioned by news or affairs coming into public knowledge within two (2) days of such parade or public assembly, provided that the organizer thereof gives written notice to the Borough at least twenty-four (24) hours prior to such parade or public assembly;
- D. Parades and public assemblies, where it is reasonably anticipated that fewer than twenty (20) persons will participate in the parade or public assembly, that do not take place on the street, but take place on public sidewalks, and will not prevent other pedestrians from using the sidewalks;
- E. It is reasonably anticipated that fewer than twenty (20) persons will participate in the parade or public assembly, and the parade or public assembly will not occur on the street.

**ARTICLE IV:        APPLICATION**

A. A person seeking a parade or public assembly permit shall file an application with the Borough Manager on forms provided by the Borough, and the application shall be signed by the applicant. No permit or permit application may be transferred.

B. For single, non-recurring parades or public assemblies, an application for a permit shall be filed with the Borough Manager at least thirty (30) and not more than one hundred eighty (180) days before the parade or public assembly is proposed to commence. The Borough Manager shall waive the minimum thirty (30) day filing period and accept an application filed within a shorter periods if, after due consideration of the date, time, place, and nature of the parade or public assembly, the anticipated number of participants, and the Borough services required in connection with the event, unless the Borough Manager determines that the waiver will present a clear and present danger of disruption of the normal flow and regulation of pedestrian or vehicular traffic on streets and sidewalks.

C. For parades or public assemblies held on a regular or recurring basis at the same location, an application for a permit covering all such parades or assemblies during that calendar year may be filed with the Borough Manager at least sixty (60) and not more than one hundred eighty (180) days before the date and time at which the first such parade or public assembly is proposed to commence. The Borough Manager may waive the minimum sixty (60) day period after due consideration of the factors specified in subsection (B) above. The Borough may set aside certain dates and locations of certain historically reoccurring parades or events for which other applicants may be denied, including, but not limited to, Chamber of Commerce sponsored events, Memorial Day Parade, 4th of July parade, Halloween parade, Lions Club Fair Week, and Trick or Treat night.

D. No application for a parade or public assembly permit shall considered unless it contains the following information:

1. The name, address and telephone number of the person seeking to conduct such parade or public assembly;
2. The requested date of the parade or public assembly;
3. The hours when such parade or public assembly will start and terminate;
4. The route to be traveled, if applicable, including the starting point and the termination point;
5. The approximate number of persons who, and animals and vehicles which will, constitute such parade or public assembly and the type of animals and the description of the vehicles;

6. A statement as to whether the parade or public assembly will occupy all or only a portion of the width of the streets proposed to be traversed;
7. The location by street of any assembly areas for such parade or public assembly;
8. The time at which units of the parade or public assembly will begin to assemble at any such area;
9. Minimum speed of parade units;
10. Maximum speed of parade units;
11. If the parade or public assembly is designed to be held by, or on behalf of, any person other than the applicant, the applicant for such permit shall file a letter from that person with the Borough authorizing the applicant to apply for the permit on his/her behalf;
12. The type of public assembly, including a general description of activities planned during the event;
13. The approximate number of participants (spectators are by definition not participants);
14. A designation of any public facilities or equipment to be utilized; and
15. A signed agreement of the parade organizers that they will ensure the parade participants will comply with the parade rules as listed on the parade permit application form.

*E. Indemnification and reimbursement agreement.* No application for permit shall be considered unless the applicant shall have executed an agreement with the Borough, in a form to be provided by the Borough Manager, in which the applicant shall promise and covenant to bear all costs of policing, cleaning up and restoring the streets upon conclusion of the event or activity; to reimburse the Borough for any such costs incurred by the Borough; and to indemnify and hold the Borough harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the permittee, the sponsoring organization, its officers, employees or agents or any person under their control insofar as permitted by law.

*F. Security Deposit.* For any activity described in this chapter, no application for permit shall be considered unless the applicant has paid, within the time prescribed by this chapter, the security deposit in an amount in accordance with the schedule of fees set and approved by resolution by Borough Council. The amount of the security deposit set in the schedule of fees shall be equal to the estimated cost of policing, cleaning up, and

restoring the premises upon the conclusion of the use or activity. The security deposit shall be deposited by the Borough into an escrow account. Promptly upon the conclusion of a permitted activity, the city shall inspect the premises and equipment used by the permittee.

1. If it is determined that there has been no damage to Borough property beyond reasonable wear and tear, the security deposit shall be refunded in full within thirty (30) days of the conclusion of the permitted event.
2. If it is determined by such inspection that the permitted event proximately caused damage to Borough property in excess of normal wear and tear and which requires repairs in excess of routine maintenance or determined that fines should be assessed against the permittee pursuant to this chapter, the Borough shall retain the security deposit any portion thereof necessary to pay for the cost of repair or any fines assessed against the permittee. The Borough manager, or his/her designee shall give written notice of the assessment of damages or fine and retention of the security deposit to the permittee by personal delivery or by deposit in the United States mail, with proper postage prepaid to the name and address set forth in the application for permit. Any assessment of damages or fine in excess of the security deposit shall be paid to the city within ten (10) days after notice of such fine or assessment of damage is sent. Retention of all or a portion of a security deposit shall be subject to the appeal procedure contained in this chapter.

*G. Proof of Insurance.* No application for permit shall be considered unless the applicant shall provide to the Borough Manager a certificate from an insurer evidencing insurance coverage in the amount proscribed in this section at the time of application. The certificate shall also provide that the insurer shall give the Borough reasonable advance notice or insurer's intent to cancel the insurance coverage provided. Applicant shall procure and maintain at all times during its permitted activity insurance in such amounts and with such coverage as shall reasonably be required by the Borough and shall name the Borough as an additional insured there under. The amount and types of insurance shall be determined based upon the nature of the activity and the risk involved and shall be set forth in a uniform schedule of insurance guidelines set by resolution by the Borough Council.

## **ARTICLE V: POLICE PROTECTION**

- A. The Chief of Police shall determine whether and to what extent additional police protection is reasonably necessary for the parade or public assembly for traffic control and public safety and report such findings to the Borough council. The Chief of Police shall base this decision on the size, location, duration, time and date of the event, the expected sale or service of alcoholic beverages (if allowed), the number of streets and intersections blocked, and the need to detour or preempt travel and use of the streets and sidewalks. The speech content of the event shall not be a factor in determining the amount of police protection necessary, unless the Chief of Police in his or her discretion determines additional resources are

necessary, and, provided that no disruption of ordinary police services or compromise of public safety will occur, regularly scheduled on-duty personnel will police the event.

**ARTICLE VI:            PROCESSING OF APPLICATION FOR PERMITS**

- A. *Order.* Applications for permits shall be processed in order of receipt; and the use of particular public property and streets shall be allocated in order of receipt of fully executed applications accompanied by the application fee.
- B. *Approval.* The Borough Manager, or his/her designee, shall issue a permit as provided herein upon receipt of an application which contains all information/items required by Article IV, from a consideration of the application and from such other information as may otherwise be obtained, unless there are grounds for denial under this Article, subsection E.
- C. *Written denials.* If no written denial or conditional approval is issued within fourteen days of the date on which a permit application is fully completed , executed, and filed with the Borough Manager or his/her designee, the application shall be deemed to be granted. However, the Borough Manager may extend the period of review for an additional fourteen days by issuance of written notice of extension. If, prior to the expiration of the extended review period, no written denial is issued, the application shall be deemed to have been granted.
- D. *Notice of Denial of Issuance of Permit or notice of extended review.* Written notice of denial or notice of extension of review shall be served on the applicant by personal delivery, or by deposit in United States mail, with proper postage prepaid, to the name and address set forth on the application for permit.
- E. *Contents of Notice: grounds for denial.* Notice of denial of an application for permit shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal by the Borough Manager for measures by which the applicant may cure any defects in the application for permit or otherwise procure a permit.

Where an application for permit has been denied because a fully executed prior application for the same time and place has been received, and a permit has been or will be granted to the prior applicant authorizing uses and activities which do not reasonably permit multiple occupancy of the particular area, the Borough Manager shall propose an alternate place, if available for the same time, or an alternate time, if available for the same place.

To the extent permitted by law, the Borough Manager may deny an application for permit if the applicant or the person on whose behalf the application for permit was made has on any prior occasion made material misrepresentations regarding

the nature and scope of an event or activity previously permitted or has violated the terms of any prior permit issued to or on behalf of the applicant.

The Borough Manager may also deny an application for permit on any of the following grounds.

1. The application for permit (including any required attachments and submissions) is not fully completed and executed;
2. The applicant has not tender the required indemnification agreement, insurance certificate, or security deposit within the times prescribed by the this chapter;
3. The application for permit contains a material falsehood or misrepresentation;
4. The applicant is legally incompetent to contract or to sue and be sued;
5. The applicant or the person whose behalf the application for permit was made has on prior occasion damaged Borough property and has not paid in full for such damage, or has other outstanding and unpaid debts to the Borough;
6. A fully executed prior application for permit has the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular area;
7. The use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the Borough and previously scheduled for the same time and place;
8. The proposed use or activity is prohibited by law or by this Code and Ordinances of the Borough;
9. The propose use or activity would present an unreasonable danger to the health, safety, or welfare of the applicant, the employees of the Borough, or the public.

F. *Amendment or revision of applications.* Any amendment or revision of an application or permit shall for purposes of determining the priority of the application for permit, relate back to the original filing thereof; but the time in which the Borough Manager shall grant or deny the application for permit and serve notice of such granting or denial shall be computed from the date of the amendment or revision.

G. *Procedures for review; Waivers.*

1. *Review by Borough Council*

- a. Any applicant who is denied a permit, whose permit was revoked, or denied a request for waiver of security deposit or a certificate of insurance,

or a permittee who has had all or a portion of its security deposit retained because it was assessed damage or a fine pursuant to this section may, within seven days of the service of notice of such determination, file a written appeal for such determination with the Borough Manager, for review by Borough Council.

- i. The Borough Council shall act upon the appeal at the next scheduled meeting following receipt of the notice of appeal. Borough Council shall issue notice whether it has affirmed, modified, or reversed the denial or retention of security deposit;
  - ii. Such notice shall be deemed served upon the applicant or permittee when it is personally delivered or when it is sent by United States mail, with proper postage prepaid, to the name and address set forth on the application for permit;
  - iii. If such notice is not served upon the applicant or permittee within seven (7) days of the date upon which the appeal was filed, then the denial or retention of security deposit shall be deemed reversed.
2. *Form of Appeals.* Any appeals filed pursuant to this section shall state succinctly the grounds upon which it is asserted that the determination should be modified or reversed and shall be accompanied by copies of the application for permit, the written notice of determination by the Borough Manager, and any other papers material to the determination.
3. *Waiver of requirements.* Any requirements for a security deposit or certificate of insurance shall be waived by the Solicitor's Office, if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using the public property for the proposed activity. Fees for equipment and services shall not be waived pursuant to this subsection. Application for a waiver of a security deposit or certificate of insurance shall be made on a form prescribed by the Solicitor's office and must include an affidavit by the applicant and sufficient financial information about the applicant to enable the Solicitor's Office to determine whether the requirement(s) would be so financially burdensome that it would preclude the applicant from using public property for the proposed activity. If no written denial is issued within fourteen (14) days of the date on which the application for such waiver was received by the Solicitor's Office, the waiver request shall be deemed approved, contingent upon the applicant complying with all other permit requirements. Denials of requests for such waivers shall be subject to the appeal procedures contained in this chapter.



**ARTICLE VII:       NON-DISCRIMINATION**

The Borough shall uniformly consider each application upon its merits and shall not discriminate in granting or denying permits under this chapter based upon political, religious, ethnic, racial, disability, sexual orientation or gender-related grounds. An application for a parade or public assembly permit shall not be denied because the applicant's message is controversial or likely to incite counter-demonstrations or non-participant resistance, unless the Borough has reasonable grounds to believe the preservation of life or property is at jeopardy.

**ARTICLE VIII:       NOTICE TO BOROUGH AND BOROUGH OFFICIALS**

Immediately upon the issuance of a parade or public assembly permit, the Borough Manager shall send a Notice thereof to the following:

- A. The Chief of police;
- B. Borough Department of Public Works Supervisor;
- C. Fire Chief;
- D. The Borough Manager shall apply for a Pennsylvania Department of Transportation Parade Permit if such event will occur on property or right-of-way under the jurisdiction of the Pennsylvania Department of Transportation.

**ARTICLE IX:       OFFENSES AGAINST PARADES OR PUBLIC ASSEMBLIES**

- A. The Permittee shall have right to use the designated areas at the designated times as identified in the permit. No person shall unreasonably hamper, obstruct or impeded, or interfere with any parade or public assembly or any person, vehicle or animal participating in a parade or public assembly. A violation of this subsection is an infraction subject to the penalties imposed in Article XI of this Chapter.
- B. In the event of an emergency of a medical, fire or police nature, the Borough shall have the right to disrupt the parade or public assembly until such time that the emergency is resolved.
- C. No person shall operate a vehicle that is not part of a parade between the vehicles or persons comprising a parade or public assembly when such vehicles or persons are in motion and are conspicuously designated as a parade or public assembly. A violation of this subsection is an infraction subject to the penalties imposed in Article XI of this Chapter.

D. The Chief of Police shall have authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a public parade or public assembly. The Chief of Police shall post signs to that effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this section.

**ARTICLE X:            **REVOCAION OF PERMIT****

The Borough Manager shall have authority to revoke a parade or public assembly permit instantly upon violation of the conditions or standards of issuance as set forth in this chapter. The revocation by the Borough Manager shall be subject to the procedures for Borough Council review in Article VI (G).

**ARTICLE XI:           **PENALTIES****

Any person who shall fail or refuse to perform any act, duty or obligation imposed by this chapter shall, upon conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars (\$1,000.00) and costs of prosecution, and in default of payment thereof, may be imprisoned for not more than thirty (30) days. A separate offense shall be deemed committed on each day during or on which a violation or failure to comply occurs or continues.

**ARTICLE XII:           **REPEALER.****

All provisions of previous Ordinances of the Borough of Greencastle which are contrary to this Ordinance are expressly repealed.

**ARTICLE XIII:           **SEVERABILITY.****

If any sentence, clause, paragraph, section or portion of this chapter is declared by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such declaration shall not affect the remaining provisions of this ordinance.

**ARTICLE IV:            **EFFECTIVE DATE****

This Ordinance shall take effect immediately.

ENACTED, ORDAINED, AND APPROVED this Fourteenth day of May 2007

Borough Council of the Borough of Mercersburg, Franklin County, Pennsylvania

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President  
Joshua Meyers

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Mayor  
James C. Zeger

ATTEST:

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Secretary  
Artie Speicher