

BOROUGH OF NEW CUMBERLAND

Cumberland County, Pennsylvania

Ordinance No. 707

AN ORDINANCE AUTHORIZING AND REGULATING SPECIAL EVENTS ON BOROUGH PROPERTY AND WITHIN PUBLIC RIGHTS OF WAY IN THE BOROUGH OF NEW CUMBERLAND, CUMBERLAND COUNTY, PENNSYLVANIA.

BE IT ENACTED AND ORDAINED by the Council for the Borough of New Cumberland, Cumberland County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same:

**Section 1. Purpose and intent.**

a. Special events are activities that impact the ordinary allocation of Borough personnel or the ordinary use of Borough streets, alleys, sidewalks, rights-of-way, parks, parking lots/facilities, plazas, or other Borough property. The purpose of this ordinance is to establish criteria and procedures for applying for and approval of a special event permit granted by the Borough. Protecting all persons' civil liberties and constitutional rights is paramount. Nothing in this ordinance is intended to or shall interfere in any way with constitutionally protected activity.

b. The obligation of complying with the requirements of this ordinance is upon the applicant or sponsor, and nothing contained in this ordinance is intended to be construed to create or form the basis for liability on the part of the Borough, or its officers, employees or agents, for any injury or damage resulting from the failure of the applicant or sponsor to comply with the provisions stated herein.

**Section 2. Definitions.**

ALCOHOL — Any beer, cider, distilled liquor, or wine which is manufactured and sold in compliance with Pennsylvania Liquor Control Board (PLCB) licensing and other PLCB regulations.

APPLICANT — The person or entity who submits the special event permit, is issued the special event permit if approved, and is responsible for complying with all requirements of this ordinance.

BEER — A commercially produced alcoholic beverage of consumption obtained by the fermentation of a mash of various malted grains.

BOROUGH OF NEW CUMBERLAND or BOROUGH — A representative of the Borough of New Cumberland represented by the Borough Manager or his/her designee to administer special event permits.

CHIEF OF POLICE — The Chief of Police of the Borough or his/her designee.

CIDER — A commercially produced alcoholic beverage made from the fermentation of the juice of apples.

DISTILLED LIQUOR — An alcoholic liquor, such as brandy, whiskey, gin, or rum, obtained by distillation from wine or other fermented fruit juice or plant juice or from a starchy material that has first been brewed.

FIRE CHIEF — The Fire Chief of the New Cumberland Fire Department or his/her designee.

PUBLIC PROPERTY — Any Borough street, alley, sidewalk, right-of-way, park, parking lot, plaza, or any other property of the Borough.

SPECIAL EVENT — Any festival, concert, parade, assemblage, demonstration, bike or foot races, walks, or other planned or announced public gathering upon any public street, right-of-way or property of the Borough.

WINE — A commercially produced alcoholic beverage of consumption made by the fermentation of the juice of grapes, berries or other plants.

### **Section 3. Permit required; exceptions.**

a. No person(s) or organization(s) is to engage in, form, start, or operate a special event in or on or requiring exclusive use of or closure of public property unless a permit is obtained from the Borough.

b. This section shall not apply to the following:

(1) Any use of public property that is permitted by law or constitution.

(2) Funeral processions supervised by a licensed mortuary.

(3) Any local, state or federal governmental agency acting in the scope of its authorized functions.

### **Section 4. Application for permit.**

a. A person or organization seeking the issuance of a special event permit shall file an application with the Borough. The application will be provided by the Borough. The Borough Manager may assign a Borough staff person the responsibility for administering and enforcing this ordinance. Upon receipt of a special event application, the application will be forwarded to appropriate Borough staff members who will make a recommendation on the permit application as expeditiously as possible. In addition to the Borough of New Cumberland special event permit application, the applicant may also be required to secure permits from the Pennsylvania Department of Transportation if the

event requires the closure of a state roadway(s). The applicant has the burden of proof of obtaining any such permission of other entities, or property owners.

b. An application shall be completed, signed, and submitted at least 45 days before the date the special event is to commence. The Borough, where good cause is shown, shall have the authority to consider any application which is filed less than 45 days before the date of the event. Any required application and/or processing fee for any special event permit shall be set by resolution. If an application and/or processing fee is required, it is nonrefundable, and payment shall be made to the Borough at the time the application is submitted.

c. A person or organization shall complete all information listed on the Borough's special event permit application and any other additional information which a Borough official shall find reasonably necessary to make a fair determination as to whether a permit should be issued. If food and/or beverages are to be sold or distributed on public property, the applicant shall also complete and submit with the special events application the Borough's Registration of a Food Event on Public Property form.

d. The Borough shall issue a permit for a proposed special event unless it finds any of the following:

- (1) The event would likely endanger public safety or health.
- (2) The proposed event would seriously and unreasonably inconvenience or impact the general public's use of public property, services or facilities.
- (3) The event would unreasonably infringe upon the rights of abutting properties.
- (4) The event would conflict with another proximate event or interfere with construction or maintenance work in the immediate vicinity.
- (5) There is not sufficient qualified safety personnel or other necessary Borough staff to accommodate the event.
- (6) The applicant failed to complete the application form or provide other required information in a timely manner after being notified of the additional information or documents required.
- (7) Information contained in the application or supplemental information requested from the applicant is found to be false in any material detail.
- (8) The applicant cannot meet, or is unwilling to meet, all the requirements of this ordinance or any special conditions imposed by the Borough.
- (9) Other issues in the public interest were identified by the Borough Manager, Council, or designee.
- (10) The applicant failed to prepay required expenses, fees, charges, deposits, insurance or bonds.
- (11) The proposed event is scheduled to occur at a route or location adjacent to a school or class during a time when such school or class is in session, and the noise created by the activities of the event would substantially disrupt the educational activities of the school or class.

(12) The purpose of the proposed event is to incite crime or the overthrow of the government by force or the event would engage in or encourage participants to engage in illegal acts.

e. Generally, the Borough requires proof of liability insurance from the applicant by requiring the applicant to submit a copy of a certificate of insurance in an amount equal to the Borough's liability under the Government Tort Claims Act of the state, and requires the execution of a hold harmless agreement to indemnify the Borough in the event the Borough is held liable for any injuries or damage as a result of the event. In certain instances, the Borough does have the authority to waive the requirement for proof of insurance based on the nature of the special event.

f. The persons or organization shall comply with all other applicable federal, state and local statutes, ordinances, codes, licenses, permits, rules or regulations.

g. The persons or organizations shall also comply with all directives and instructions from the Borough administration, police, fire, public works and parks and recreation personnel.

#### **Section 5. Action on application.**

a. Unless extenuating circumstances exist, the Borough Council shall act on all special event permit applications at a regular Council meeting. If there is not a regular Council meeting scheduled between the time the application is submitted and the date of the special event, the Borough Manager has the authority to review and make a decision on the special event permit request. However, special event permit applications requesting alcohol sales and consumption may only be approved by Borough Council.

b. Prior to Borough Council or the Borough Manager acting on the special event permit application, the following shall occur:

(1) The Borough employees shall act upon the application for a permit required by this ordinance as expeditiously as possible.

(2) The Borough employees reviewing the application shall document their review of the application and any provisions that need to be addressed by the applicant and included in the permit.

c. The applicant shall be notified in writing of Borough Council's or Borough Manager's decision on the special event permit application. If the application is disapproved, the reasons therefor shall be set forth in writing.

#### **Section 6. Duties of applicant.**

a. General. The applicant under this ordinance shall comply with all permit directions, instructions, guidelines, and conditions.

b. Cleanup. Applicant shall make arrangements with the Borough for adequate trash containers for the event and procedures to clean the public property used for

the special event. Cleanup must begin immediately after the special event and continue until completed with all refuse and recycling properly contained for collection and disposal.

**Section 7. Payment of costs for services and equipment provided by Borough or for damage to public property.**

a. The Borough may impose reasonable fees and requirements upon the applicant as necessary to cover the costs of public services and equipment provided by the Borough for the special event. If a fee is imposed, an estimate of the anticipated fee may be required to be paid at the time the permit is approved.

b. Canceled event. If a fee is imposed and the special event is canceled without at least 48 hours' notice, the fee will still be assessed to cover the cost of labor and equipment. The assessed fee will not apply if inclement weather, disaster or other unforeseen circumstances occur that are not in the applicant's control result in the cancellation of the special event.

c. If damage to public property occurs as a result of the special event, the applicant shall be responsible for reimbursing the Borough for the material and labor cost to repair the damage.

d. Within the sole discretion of the Borough Manager, the Borough may require the applicant to pay a security deposit, not to exceed \$1,000.00, to cover the cost of damage to public property which occurs as a result of the special event, the cost of cleaning up after the special event, or any other incidental costs incurred by the Borough as result of the special event. The security deposit shall be held in escrow by the Borough and returned to the applicant within thirty (30) days after the conclusion of the special event, less any amounts retained by the Borough to cover incidental costs incurred by the Borough as a result of the special event. In the event the Borough retains the security deposit, or any portion thereof, the Borough shall provide the applicant with an itemized list of the incidental costs incurred by the Borough as a result of the special event. Retention by the Borough of the security deposit, or any portion thereof, shall not relieve the applicant of applicant's obligations under this Ordinance to reimburse the Borough for any incidental costs incurred by the Borough as a result of the special event.

**Section 8. Security and Emergency Medical Services.**

The applicant must provide adequate security for the special event as determined by the Chief of Police. ~~In addition, the~~ The applicant may be required to reimburse the Borough for the cost of additional police services the Chief of Police determines is required to insure public safety for the special event. In addition, depending upon the number of anticipated attendees at the special event, the applicant must provide and pay for adequate emergency medical services for the special event, as determined by the Fire Chief in accordance with the Emergency Medical Services System Act, 35 Pa.C.S.A. §8101 et seq., and regulations promulgated thereunder at 28 Pa.Code Chapter 1033.

**Section 9. Street closures to vehicle traffic.**

- a. Closing public streets to vehicular traffic can create an inconvenience for neighboring businesses, residents, and the driving public. If the applicant intends to close any street to vehicular or pedestrian traffic, that request shall be included in the application. The applicant shall submit with the application documentation from all properties located on the segment of the street to be closed indicating whether the property owner/ manager supports the street closure request.
- b. In addition to the street closure requirements below, all street closures must be done in accordance with PennDOT and any local regulations. The applicant is responsible for any costs associated with meeting any PennDOT or local street closing regulations.
- c. All street closure requests, especially requests to close a state roadway, will be carefully evaluated to determine if the community benefit from closing the street for the proposed special event outweighs the inconvenience or impact to the neighboring businesses, residents, and general public's use of public property, services or facilities. This evaluation can be cause for denying the street closure request.
- d. If a street closure is requested, the applicant may be required to meet with Borough police and/or public works staff to discuss in detail the street closure request and to develop a traffic detour and traffic control plan.

**Section 10. Alcohol sales and consumption.**

For purposes of this ordinance, "alcohol" refers to beer, cider, distilled liquor and/or wine only. Under no circumstances shall any other type of alcohol be approved.

- a. Special events that include the sale of alcohol may only be considered for approval if requested for special events sponsored by a non-profit corporation or association located within the Borough of New Cumberland, or the purpose of which non-profit corporation or association is to benefit the residents of the Borough of New Cumberland, by way of example, including but not limited to the New Cumberland Olde Towne Association and its related entities.
- b. Special events that include the sale of alcohol may be held only within the following locations:
  - (1) Any designated public park within the Borough of New Cumberland with sufficient capacity to accommodate the special event (any ordinance provisions prohibiting the possession or consumption of alcohol within public parks of the Borough of New Cumberland shall be temporarily suspended for the special event, subject to the terms and conditions set forth herein); or
  - (2) The area bounded by Market Street between 2nd Alley and 3rd Avenue.
- c. For Council to consider a request for the sale and consumption of alcohol, the applicant shall provide the following with the special event application:

- (1) Location, hours of sales, site diagram, security procedures (volunteer and uniform staffing, ID checking, and dispensing operations), physical enclosure measures, parking locations for beer trucks, etc.
  - (2) The service of and consumption of alcoholic beverages must comply with all applicable federal, state, and local laws or regulations, including but not limited to the Pennsylvania Liquor Control Board (PLCB) licensing and other PLCB regulations. Before a permit is approved, documentation shall be provided to the Borough showing that the proposed alcohol sales complies with all PLCB licensing and other PLCB regulations.
  - (3) The service of alcohol to consumers in glass or can containers is prohibited on Borough property or streets. Alcoholic beverages must be served to consumers in paper or plastic containers and in containers no larger than 16 fluid ounces.
- d. The Borough reserves the right to revoke the permit or require the applicant to discontinue alcohol sales and consumption whenever Borough police determine the consumption of alcohol by participants becomes excessive, or whenever Borough police determines participants are demonstrating unruly, loud, abusive, or other inappropriate behavior during the special event.
- e. If Council approves the sale and consumption of alcohol for a special event, the following shall apply:
- (1) The applicant must post signs stating that alcoholic beverages are prohibited beyond the approved permitted area and that underage drinking is prohibited. Signs must be posted adequately designating the approved permitted area.
  - (2) At least one person at each alcohol serving station shall be trained and certified through the Responsible Alcohol Management Program (RAMP) server/seller training.
  - (3) All participants consuming alcohol must be provided and wear a designating item to identify that they are of legal drinking age. The specific type of item the applicant proposes to issue is subject to approval by the Borough. At a minimum, the item issued shall be so designed that it would prevent a person from transferring the identifier to another person.
  - (4) All alcohol sales must end at least 45 minutes before the scheduled ending time of the special event.
  - (5) The applicant must also provide a nonalcoholic beverage option.
  - (6) Any other requirements determined by Council shall be followed.

**Section 11. Prohibited conduct.**

a. No person shall unreasonably hamper, obstruct, impede or interfere with any special event, or with any person, vehicle or animal participating or used in any special event.

b. The Borough shall have the authority to prohibit or restrict the parking of vehicles along a street or area properly designated or posted for an approved special event, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.

c. Beverages shall not be sold or distributed in glass containers on public property during an approved special event.

**Section 12. Termination and revocation of permit.**

a. A special event permit issued under this ordinance for a special event in progress may be terminated by the Chief of Police or his/ her designee, if termination is a reasonable and necessary response to imminent danger or threat to public safety.

b. A special event permit may be revoked by the Borough for failing to comply with the conditions for the issuance of the permit, violating any provision of this ordinance or other applicable ordinances and state law.

**Section 13. Violations and penalties.**

a. Failure to obey or violation of any provision(s) of this ordinance, or any order, requirement, or condition imposed as part of the permit approval, shall be a violation of this ordinance by the applicant and may result in the termination of the special event, revocation of the special event permit, and/or subject the violator to a fine as listed in Subsection b below. A future special event permit request may be denied based on a past violation of this ordinance.

b. Any person failing to obey or who violates any provision of this ordinance, or any order, requirement, or condition imposed as part of the permit approval, can be subject to a fine of not less than \$300 nor more than \$1,000 plus cost of prosecution.

**Section 14. Severability.**

If any part, provision or section of this ordinance is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

**Section 15. Repealer.**

Any Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

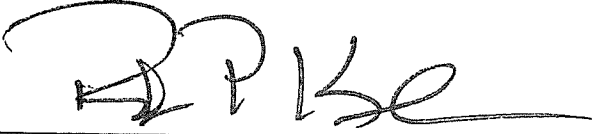
**Section 16. Effective Date.**

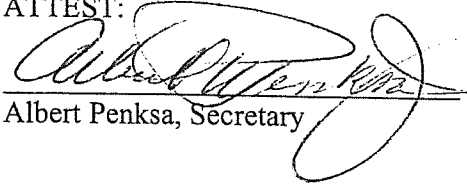
This Ordinance shall become effective immediately as provided by law.



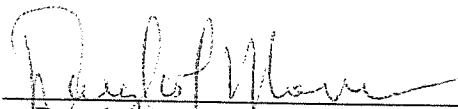
ENACTED AND ORDAINED this 7<sup>th</sup> day of October, 2020, by the Borough Council for the Borough of New Cumberland, Cumberland County, Pennsylvania.

NEW CUMBERLAND BOROUGH COUNCIL

By:   
Robert P. Kline, Council President

ATTEST:  
  
Albert Penksa, Secretary

APPROVED this 7<sup>th</sup> day of October, 2020.

By:   
Douglas L. Morrow, Mayor