

ORDINANCE 2016 - 32

AN ORDINANCE AMENDING THE CITY OF MARTINSBURG CODE, CHAPTER FIVE-PART ONE-ADMINISTRATIVE, ARTICLE 155 SPECIAL EVENTS, BY ADDING SECTIONS 155.01 THROUGH 155.10 TO PROVIDE FOR THE REGULATING AND PERMITTING SPECIAL EVENTS AND PARADES.

WHEREAS, the City of Martinsburg recognizes the public's right of assembly and free speech, and the use of designated public facilities for such purpose. The City also recognizes the crucial and substantial benefits of special events, which provide cultural enrichment, promote economic vitality and enhance community identity and pride, as well as provide opportunities for fundraising for community nonprofit organizations. The City of Martinsburg seeks to accommodate public rights in a matter that is consistent with governmental interest by establishing the below policies, procedures, terms, conditions and rates for the use of public spaces and facilities for such purposes of parades, assemblages and special events; and.

WHEREAS, this article applies to all public parades, assemblies and special events that may be expected to affect the public, property or services of the City of Martinsburg, or otherwise require an expenditure of time or resources or create the potential for liability or public disturbance or other substantial concern, not limited to the assurance of free and safe passage of pedestrians and vehicular traffic on the public rights of way and the safe use and enjoyment of public spaces open to the general public. This article also applies to requests for use of public facilities or spaces for purposes other than governmental operations.

Section 155.01 Definitions

- a) *Aggrieved Person*—a person who can demonstrate a specific, personal and legal interest in the final decision of an application for a permit issued under this ordinance, as distinguished from a general interest, such as is the concern of all members of the community, and which interest would be specifically and personally prejudiced by the decision or benefited by its reversal.
- b) *Applicant*—the authorized agent of the sponsor who completes the application and acts as a primary contact for the special event.
- c) *Annual Event*—an event recurring each year at approximately the same date and time, which has previously complied with the permit requirements.
- d) *City Funded Event*—an event for which the City of Martinsburg engages full financial responsibility.
- e) *City Co-Funded Event*—an event for which the City of Martinsburg provides a portion of financial support as determined by City Council
- f) *Closed Route*—a route along or across a public right of way on which nonemergency vehicular traffic is not permitted to proceed for the entire duration of a special event

- g) *Event Participants*—A person or persons in attendance at an event, including, but not limited to, spectators, vendors, event staff, City staff and any others present for the purpose of the event.
- h) *Farmer’s Market*—an organized group that utilizes a street or parking lot to sell merchandise, food items and various agriculturally related items or product.
- i) *Parade*—any march, demonstration, procession or motorcade consisting of people, animals or vehicles, or a combination thereof, upon the streets, sidewalks or other public areas within the City with an intent or likely effect of attracting public attention and interfering with, or having a tendency to interfere with, the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks or other public property.
- j) *Permit*—written permission for assembly, parade, or use of public facilities issued pursuant to this article.
- k) *Processional Event*—Any event that is non-stationary and continues in a processional manner through town, such as a parade, march, race, etc., and requires the closure of multiple streets or multiple blocks on the same street.
- l) *Public Assembly*—any meeting, march, demonstration, picket line, rally or gathering of 25 or more persons for a common purpose as a result of prior planning that affects or may reasonably be expected to affect the normal flow or regulation of pedestrian or vehicular traffic upon the streets or other public facility, other than a park or recreational building or facility.
- m) *Public Facility*—a building, structure, place or other location or area which a person may seek to utilize for purposes other than the normal and usual governmental operations of the City, but excludes a public park and recreational facility.
- n) *Rolling Closure Route*—A street, sidewalk, trail, walkway or other right of way which is closed to accommodate an event, where, as the event passes, the right of way is reopened for general public use.
- o) *Special Event*—Any activity, such as a parade, entertainment or sporting event, major highway construction or maintenance activity, street closure, public demonstration, amusement, cultural recognition, festival, street fair or any other situation where there is need for the control of traffic and crowds or prevention of crime and which is usually scheduled in advance, allowing for planning or required police services prior to the event.
- p) *Spontaneous Public Event*—any unplanned or unannounced coming together of people, animals or vehicles in a parade or public assembly which is not contemplated beforehand by any participant therein and which is caused by or in response to unforeseen circumstances or events occasioned by news or affairs first coming into public knowledge within five (5) days of such parade or public assembly.
- q) *Town Square Pedestrian Plaza Reservation*—any planned event which will draw individuals into the Town Square Pedestrian Plaza for purposes of attending or patronizing any assembly, retail establishment, congregation or other event, whether or not City services are requested or required

Section 155.02 Permit Required

- a) It shall be unlawful for any person to conduct or participate in any parade, public assembly or special event unless a written permit has been issued in accordance with the provisions of this ordinance
- b) The provisions of this permit shall not apply to the following:
 - 1) Spontaneous public events; or
 - 2) Recreational activities, including jogging or walking, which do not require closing of public streets or other rights of way and that do not interfere, or have a tendency to interfere, with the normal use of any public property in a place open to the general public; or
 - 3) Funeral processions; or
 - 4) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of proper school authorities
 - 5) The United States Army, Navy, Air Force, Marine Corp, Coast Guard, or any other branch or organization under the direction of the United States Armed Forces; the military forces of the State or the police and fire division of the City of Martinsburg, Berkeley County or State of West Virginia, acting in official capacity
 - 6) A governmental agency/agencies acting within the scope of its functions; or
 - 7) City owned property under the regulation and maintenance of Martinsburg-Berkeley County Parks and Recreation
- c) Applicants requesting a Special Event Permit are required to submit a completed Application for Special Event Permit, along with a twenty-five dollar (\$25) non-refundable application fee payable to the City of Martinsburg for review and processing, at least sixty (60) days prior to the date of proposed event. Other fees may be applicable, in accordance with Section 155.09. Applicants requesting a Special Event Permit for use or reservation of the Town Square Pedestrian Plaza are exempt from the \$25 non-refundable application fee, but may be subject to other rates or fees as determined by need for City Services
- d) All applications must be received by the City of Martinsburg, either by mail, electronic mail, fax or delivery in person, addressed to the City Manager or designee, no later than sixty (60) days before the proposed event date
- e) The application must be filled out, in its entirety, and shall provide all relevant information, including but not limited to, alternatives for location, route, date, and time
- f) As a condition of the Special Event Application, all applicants are responsible for providing a specific and accurate representation of the proposed event so that the City of Martinsburg may

accurately identify the required level of services, including but not limited to, Police, Emergency Services and Public Works

- g) Preferred Routes may be suggested by the City for parades and some other processional events, and applicants are asked to review and consider these routes; the City Council reserves the right to adjust routes when conditions or events create a situation in which a preferred or requested route is unavailable
- h) The City reserves the right to deny any permit application, sponsored or affiliated with a person or organization not in good standing with the City, in regards to outstanding fees, taxes or other obligations
- i) Events are required to conform to all other applicable City ordinances and polices; including but not limited to, signage, zoning, handbill, and noise and nuisance ordinances

Section 155.03 Issuance or Denial of Permit

- a) All applications will be reviewed by the applicable department heads (Chief of Police, Planning Department, Public Works, Fire Chief, City Manager, etc.) and forwarded to City Council for final approval. City Council may set any conditions and fees for service or deposits, in accordance with policy, with the understanding that all conditions and fees must be satisfied within fifteen (15) calendar days prior to the event.
- b) Upon review of comments, concerns and recommendations of applicable Department Heads, the City Manager or designee shall present a final recommendation to the City Council, and Council may approve the permit if the event is determined to be unlikely to endanger the public health, welfare or safety and applying the following criteria:
 - 1) The time, duration, route and size of the event will not unreasonably interrupt the safe and orderly movement of vehicular or pedestrian traffic or the normal use of public property in a place open to the general public; and
 - 2) The time, duration, route, size and proposed activities of the event will not be scheduled to overly burden any one neighborhood or street on a consistent basis or cause or tend to cause an unreasonable disturbance to adjacent property owners or tenants including, but not limited to, noise, light and traffic
 - 3) The event is not of such a nature that it will require diversion of so great a number of police and fire/EMS personnel to properly police the line of movement in the areas contiguous thereto as to impair the normal protection of the remainder of the City; and
 - 4) The applicant has, where appropriate, designated monitors sufficient to control the orderly conduct of the event in conformity with such permit; and

- 5) The conduct of the event will not unduly interfere with the proper fire, ambulance and police protection or service to the remainder of the City or is likely to unreasonably disrupt other public services and protection normally provided to the City;
- 6) The event will not interfere with another event for which a permit has been granted or cause irreconcilable interference with previously approved or scheduled construction, maintenance or other activities;
- 7) The event proposed will not violate, and will conform, with all applicable Federal, State and local regulations and laws governing the proposed event; and
- 8) If alcoholic beverages will be served at the event, the applicant must comply with all applicable provisions of the State Code and local ordinances pertaining to serving and consumption of alcoholic beverages. Additionally:
- a) the applicant may be required to demonstrate that adequate measures have or otherwise will be taken to ensure the safety of persons who may have become impaired or intoxicated at the event; and
 - b) the applicant may be required to demonstrate that adequate measures have or otherwise will be taken to ensure that underage persons are not served or permitted to consume alcoholic beverages at the event;
 - c) no permit shall be issued to any applicant where alcohol is to be served upon any property or in any facility where alcohol is otherwise prohibited by any other statute
- c) For special events or public assemblies, such as a concert series or monthly reservation of the Town Square Pedestrian Plaza, held on a regular or recurring basis at the same location, an application for an annual permit covering all such assemblies may be filed with the City Manager or designee at least sixty (60) days prior to the first scheduled event. The application will then follow the heretofore described review and approval process.
- d) If two or more applications are submitted requesting a permit for events to be held at the same time and place, the application first filed shall be first considered, and will be granted if it meets all requirements of this ordinance
- e) In the event that the any application is denied by City Council, the City Manager or designee will promptly mail, to the applicant, a notice of action which will contain the reasons for denial and notify the applicant of the right to appeal pursuant to Section 155.06
- f) Nothing in this ordinance shall permit the Martinsburg City Council to deny a permit based upon political, social or religious grounds or reasons or based upon the content of views expressed
- g) The City Manager, or designee, under the direction of the City Council, may authorize the conduct of an event on a date, at a time, at a place or over a route, different from that originally

proposed. Any applicant desiring to accept an alternate permit shall file a written notice of acceptance with the City Manager. Any alternate permit shall conform to all requirements of this ordinance and shall have the same effect as any other permit issued therein.

Section 155.04 Compliance with Directions and Conditions and Penalty

Every person or organization to whom a permit is issued under this ordinance shall substantially comply with all permit terms and conditions and with all applicable laws and ordinances. The parade or assembly chairman or other person heading or leading the event shall carry the permit upon his or her person at all times during the conduct of the event, and shall show the permit when requested to do so. Any violation of this Ordinance will be punishable by a fine of up to \$500.00

Section 155.05 Revocation of Permit

- a) The City Manager or designee, with or without order of Council, shall have the authority to revoke any permit issued to this article if any information supplied by the applicant is discovered to be substantially false or intentionally misleading or if any term, condition, restriction or limitation of the permit has been substantially violated and if there is any continued violation of the terms, conditions, restrictions or limitations after the applicant or anyone working in concert with the applicant has been notified, in writing or otherwise, of a violation of the permit by a representative of the City of Martinsburg or an appropriate law enforcement official.
- b) The City Manager or designee, with or without order of Council, shall have the authority to alter or cancel an event at any time due to unforeseen circumstances. If the event is cancelled by the City of Martinsburg due to unforeseen circumstances, permit application fees will be reimbursed and fees for City services will be prorated and refunded, based on services rendered prior to notification of the cancellation. Any expenses incurred by the applicant relating to the event will not be the liability of the City of Martinsburg.
- c) The City Manager or designee may authorize the refund of any fees for City services not utilized in the event that the applicant is unable to hold or conduct the event due to inclement weather or some other cause not within the applicant's control. The request for such refund must be received by the City Manager or designee within ten (10) days of the scheduled event date. The application fee is non-refundable.

Section 155.06 Appeal

- a) Any aggrieved person, having been denied a permit under the terms and conditions of this ordinance, or by the revocation of a permit after one has been issued, may present an amended request, which will be reviewed as a new request and must meet all heretofore conditions and deadlines
- b) The decision of the Martinsburg City Council may be appealed to the Circuit Court of Berkeley, in accordance with the laws of the State of West Virginia.

- c) In any appeal under this section, the City of Martinsburg shall have the burden of demonstrating that the denial of the permit was justified under the terms and conditions of this ordinance.

Section 155.07 Public Conduct during Parades, Demonstrations and Assemblies

- a) No person shall unreasonably hamper, obstruct, impede or interfere with any event or with any person, vehicle or animal participating or used in an event for which a permit has been issued in accordance with the provision of this ordinance
- b) No driver of a vehicle shall drive between the vehicles, persons or animals comprising a parade, special event, public assembly or funeral procession except when otherwise directed by a police officer. This shall not apply to authorized emergency vehicles.
- c) The Chief of Police, or his designee, shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or rights of way constituting a part of the route of a parade, demonstration or assembly. The Chief of Police, or his designee, shall post signs to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.

Section 155.08 Indemnification and Insurance Requirements

- a) The applicant shall indemnify and hold harmless the City of Martinsburg, its officers, agents, employees and volunteers from any and all claims, causes of actions, penalties, losses, expenses (including reasonable attorney's fees) and any other liability for injuries or damages to persons or property resulting from the special event which occurred by the omissions or authorized acts of the applicant
- b) if the City incurs any costs as a result of the applicant's failure to comply with any provisions, of the City property is destroyed or damaged by reason of a special event, the applicant shall reimburse the City for its actual costs, including the actual repair or replacement cost of the property. The City may retain any deposit or portion thereof as full or partial reimbursement for any such damage.
- c) General liability insurance coverage, in the amount of \$1 million per instance and \$2 million aggregate, may be required before an event and maintained throughout the duration of the event, including set-up and dismantle periods. The City of Martinsburg is to be named as an additional insured.
- d) The City reserves the right to recommend a higher amount of required insurance depending on the proposed activity.
- e) Requested use of rights of way or property owned by entities or persons other than the City of Martinsburg may require additional approvals, conditions or indemnification and insurance. The City of Martinsburg shall make contact with state and county agencies when necessary.

Approval of private property owners for use of rights of ways and property is the sole responsibility of the applicant.

- f) No applicant shall be required to comply with the insurance requirement of this section if the activity proposed for the special event is protected by the First Amendment to the United States Constitution and the applicant produces evidence that complying with the insurance provision is impossible or so financially burdensome that it would preclude the special event from occurring.
- g) All events are subject to the requirement to successfully pass all fire, life safety and building safety inspections when applicable

Section 155.09 Fees

- a) Fees may be assessed on events which require additional City services as follows:
 - Police Fees--\$35 per hour or partial hour worked, per officer.
 - Fire/EMS--\$35 per hour or partial hour worked, per firefighter and \$100 per hour or partial hour for firefighting apparatus and/or medic unit
 - Public Works--\$20 per hour or partial hour worked, per laborer, including time requested or deemed necessary for set up and/or clean up
- b) Additional fees for City Service may be waived for all City Funded Events and City Co-Funded Events
- c) The need for City services is determined by applicant request or staff recommendation and ultimately approved by Council

Section 155.10 Severability

If any portion of this article is, for any reason, held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance and such invalid portion(s) thereof shall be severable.

This ordinance shall be effective as of date of passage.

Introduced: November 17, 2016

Adopted: December 8, 2016

Attest


Gena Long, City Recorder


George Karos, Mayor