

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE BOROUGH OF CHAMBERSBURG, FRANKLIN COUNTY, AMENDING CHAPTER 92 OF THE CODE OF THE BOROUGH OF CHAMBERSBURG, ENTITLED “ALCOHOLIC BEVERAGES”; AMENDING CHAPTER 204 OF THE CODE OF THE BOROUGH OF CHAMBERSBURG, ENTITLED “PARADES AND PUBLIC GATHERINGS”; AND AMENDING CHAPTER 254, ARTICLE III OF THE CODE OF THE BOROUGH OF CHAMBERSBURG, ENTITLED “PUBLIC VENDING”; ALL OF WHICH AMENDMENTS PROVIDE FOR THE PUBLIC CONSUMPTION, POSSESSION, AND DISTRIBUTION OF ALCOHOLIC BEVERAGES UNDER LIMITED CIRCUMSTANCES

WHEREAS, the Pennsylvania Borough Code, 8 Pa. C.S. §§ 101-3501, (the “Borough Code”), at Section 1202 empowers the Borough to promulgate regulations as may be necessary for the health, morals, general welfare, comfort, and safety of the Borough and its citizens; and

WHEREAS, permitting the consumption of alcohol and the possession of open containers of alcoholic beverages in public places in the Borough in limited circumstances and in accordance with the regulations set forth herein has the potential to promote community involvement, advance economic development, and attract business and events to the Borough; and

WHEREAS, the Mayor and Town Council of the Borough of Chambersburg deem it to be in the best interest and the general welfare of the citizens and residents of the Borough to amend Chapter 92 of the Code of the Borough of Chambersburg, entitled “Alcoholic Beverages”; Chapter 204 of the Code of the Borough of Chambersburg, entitled “Parades and Public Gatherings”; and Chapter 254, Article III of the Code of the Borough of Chambersburg, entitled “Public Vending”, in order to set forth those limited circumstances under which consumption of alcohol and possession of open containers of alcoholic beverages shall be permitted in public places in the Borough, and to ensure the affected Chapters properly reference and correspond to other provisions of the Code.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Mayor and Town Council of the Borough of Chambersburg, Franklin County, Pennsylvania and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. The contents of Chapter 92, Section 92-2 are hereby amended to change the title to “Consumption and possession in public places unlawful” and by replacing the entire contents thereof with the following:

Except as provided in Section 92-3 of this Chapter, it shall be unlawful, within the Borough of Chambersburg, for any person to do any of the following:

- A. drink liquor or malt or brewed beverages upon any public street, public municipal parking lot, private parking lot open to public use, or public park, or in any vehicle being operated or parked thereon;

- B. to have in such person's possession or in a vehicle under such person's control any open container containing liquor or malt or brewed beverages upon any public street, public municipal parking lot, private parking lot open to public use, or public park.

SECTION 2. The contents of Chapter 92, Section 92-3 are hereby amended to change the title to "Exceptions" and by replacing the entire contents thereof with the following:

- A. The provisions of this Chapter shall not apply to any facility or establishment licensed to serve or to dispense alcoholic beverages by the Pennsylvania Liquor Control Board or other body pursuant to the laws of the Commonwealth of Pennsylvania and persons who are patrons of any such facilities or establishments, provided that the patrons remain within the confines of said facilities or establishments with alcoholic beverages.
- B. Nothing in this Chapter shall be construed to prohibit the retail sale of closed containers of alcoholic beverages or the offering of samples in conjunction therewith, provided the seller has obtained all required licenses under the Pennsylvania Liquor Code, 47 P.S. §§ 1-101 – 10-1001, and complies with all relevant provisions thereof, and provided the seller complies with all relevant provisions of Chapter 254, Article III of the Code of the Borough of Chambersburg, entitled "Public Vending".
- C. Special Events. The provisions of this Chapter shall not apply to special events for which a Special Event Permit is properly issued in accordance with the following:

(1) Events on private property. If any person desires to possess, distribute, or consume open containers of alcoholic beverages outdoors but on private property open to the public in the Borough of Chambersburg, said person must apply to the Borough Manager, or his duly authorized representative, for a permit therefor not less than ten (10) days prior to the date of the scheduled event for which the permit is requested. No fee shall be charged for said permit; however, a permit shall be issued only upon the following conditions:

- a. Such person must agree, in writing, to assume full responsibility for supervision of the event and the conduct of the group or individuals benefiting from such permit and to properly clean up and restore the premises, after use, to its prior condition.
- b. Each person publicly consuming alcohol or possessing an open container must be of legal drinking age pursuant to Pennsylvania law.
- c. Open containers of alcoholic beverages may only be served or distributed by an individual or entity with a valid brewery, catering, restaurant, or winery license in the Commonwealth.
- d. Distribution, consumption, and possession of open containers of alcoholic beverages shall only occur within the geographic bounds of, and only within the approved timeframe of, the special event permit.

- e. No permit shall be issued to any person who has failed on a previous occasion to comply with the conditions of a special event permit for thirty-six months after said failure.
- f. No permit may be issued for a period in excess of four consecutive days, nor may multiple permits be issued for more than a total of twelve special events in any calendar year.
- g. If there is any charge or donation for admission to the event or purchase of any merchandise, food or drink, then before a permit will be issued the applicant must submit proof that he obtained a special occasion permit from the Pennsylvania Liquor Control Board.
- h. Obtaining a permit under this Chapter does not relieve the permit holder from complying with Chapter 119 and Chapter 204, if applicable.

(2) Events on public property. If any person desires to possess, distribute, or consume alcoholic beverages on public property in the Borough of Chambersburg upon which the Borough may, in its discretion, permit the possession, distribution, or consumption of alcoholic beverages, said person must apply to the Borough Manager, or his duly authorized representative, for a permit therefor not less than ten (10) days prior to the date of the scheduled event for which the permit is requested. No permit shall be issued prior to applicant attending an in-person meeting with a Borough designee and a representative of the Borough Police Department for the purpose of discussing event specifications, alcohol, and security requirements. A fee in an amount established by resolution from time to time shall be charged for said permit, which shall be issued only upon the following conditions:

- a. Each person publicly consuming alcohol or possessing an open container must be of legal drinking age pursuant to Pennsylvania law.
- b. Distribution, consumption, and possession of open containers of alcoholic beverages shall only occur within the geographic bounds of, and only within the approved timeframe of, the special event permit.
- c. Open containers of alcoholic beverages may only be served or distributed by an individual or entity with a valid brewery, catering, restaurant, or winery license in the Commonwealth.
- d. No permit shall be issued to any person who has failed on a previous occasion to comply with the conditions of a special event permit for thirty-six months after said failure.
- e. Only beverages that are fifteen percent (15%) or less alcohol by volume (ABV) may be publicly consumed or served in an open container.
- f. No person may consume more than one (1) alcoholic beverage at a time.
- g. Open containers shall be limited to a volume of 16 ounces or less.

- h. Open containers shall be non-breakable and shall not be the original container.
- i. This exception shall only apply between the hours of noon and 8:00 p.m.
- j. No person may enter an establishment with an open container in their possession without permission of the proprietor.
- k. If there is any charge or donation for admission to the event or purchase of any merchandise, food or drink, then before a permit will be issued the applicant must submit proof that he obtained a special occasion permit from the Pennsylvania Liquor Control Board.
- l. Obtaining a permit under this Chapter does not relieve the permit holder from complying with Chapter 119 and Chapter 204, if applicable.

SECTION 3. The contents of Chapter 92, Section 92-7 are hereby amended by replacing the entire contents thereof with the following:

- A. Any person or entity who shall violate any provision of this Chapter shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than \$100.00 nor more than \$600.00 plus costs of prosecution and in default of payment of the same, to undergo imprisonment for not more than thirty (30) days.
- B. Enforcement shall be by the Chambersburg Borough Police Department and/or the Code Enforcement Officer.

SECTION 4. The contents of Chapter 204, Section 204-2, are hereby amended to replace the term “Parade Permit” with the term “Special Event Permit” and to include the following definition:

PUBLIC GATHERING

Any assembly of people for the purpose of public amusement, entertainment, business purpose, community festival or event, or similar gathering in or upon any street, park, or other public park in the Borough. Gatherings on sidewalks that do not block sidewalks are not public gatherings.

SECTION 5. The contents of Chapter 204, Section 204-3 are hereby amended to read as follows:

No parade or public gathering shall be conducted by any person upon any street, park, or other public place in the Borough of Chambersburg without first obtaining a Special Event Permit from Town Council through the Borough Secretary, or designee. No person shall participate in a parade or public gathering prior to full compliance with the provisions of this Chapter. The Borough Secretary shall inform Town Council concerning the granting and issuance of any Special Event Permit. The granting of a Special Event Permit shall not constitute an endorsement of the applicant by the Borough of Chambersburg.

SECTION 6. The contents of Chapter 204, Section 204-5 are hereby amended to read as follows:

- A. Town Council delegates to the Borough Manager and Borough Secretary the ability to promulgate reasonable rules and regulations for Parades and Public Gatherings consistent with this chapter and to establish a Special Event Permit application and form, and require such documents as may be deemed necessary.
- B. Filing period. An application for a Special Event Permit shall be filed with the Borough Secretary, or designee, not fewer than 28 days in advance of the proposed parade date. Where good cause is shown, the Borough Secretary, or designee, shall have the authority to consider any application hereunder which is filed fewer than 28 days in advance of the proposed parade or public gathering date.
- C. Application contents. The following information shall be included on said application:
 - (1) Name, address and telephone number of the person seeking to conduct such parade or public gathering and requesting the Special Event Permit.
 - (2) If the parade or public gathering is proposed to be conducted for, on behalf of or by any organization, the name, address and telephone number of the headquarters of the organization and of the authorized and responsible heads of such organization.
 - (3) The name, address and telephone number of the person or persons who will be in charge of and who will be responsible for its conduct; a concise statement of the purpose of the parade or public gathering.
 - (4) The date when the parade or public gathering is to be conducted and the hours when such parade or public gathering will start and terminate.
 - (5) The route to be traveled, the starting point and the termination point, including a map depicting the course of the parade or the location of the parade or public gathering.
 - (6) A statement as to whether the parade or public gathering will occupy all or only a portion of the width of the streets or public land proposed to be traveled.
 - (7) The location, by streets, of any assembly (formation and disbanding) areas for such parade or public gathering, including time at which units of the parade or public gathering will begin to assemble. If assembly area is on private property, the name, address and telephone number of the property owner and/or a letter of permission for the assembly or gathering.
 - (8) The approximate size and length of the parade or the geographic area of the public gathering, including the approximate number of persons and vehicles involved in the parade or public gathering, including number and types of animals (if any).
 - (9) Any additional information which the Borough Secretary shall find reasonably necessary in order to make a determination as to whether a Special Event Permit application is in compliance with the requirements of this Chapter and the rules and regulations adopted pursuant hereto and a Special Event Permit can be issued.

SECTION 7. The contents of Chapter 204, Section 204-7 are hereby amended to read as follows:

The cost of a Special Event Permit shall be established by Resolution from time to time. In addition to any Special Event Permit fee, a person sponsoring a parade or public gathering

will be informed prior to the issuance of a Special Event Permit that if the cost of any services provided by the Chambersburg Police and Fire Department for the event exceed \$300.00, the person will be responsible for those costs exceeding \$300.00. Direct costs incurred by the Borough to control traffic as a result of a parade or public gathering shall be borne by the applicant. All costs related to other services provided by the Borough for the event, including, but not limited to, code enforcement, sanitation, and auxiliary police, shall be borne by the applicant. Costs shall be limited to direct out-of-pocket expenses incurred by the Borough, such as, but not limited to, wages paid to Borough employees. No Special Event Permit shall be issued until all costs for any prior Special Event Permits issued to the applicant have been paid in full.

SECTION 8. The contents of Chapter 204, Section 204-8 are hereby amended to read as follows:

- A. Each person filing an application for a Special Event Permit shall provide the Borough with a certificate of insurance evidencing that said person maintains insurance which will protect that person and the Borough of Chambersburg from claims for damages for personal injury, including accidental death, as well as claims for property damages which may arise from the conduct of the parade. Excluded from any claim for damages will be damages related to persons objecting to the content of the proposed or actual message of the applicant. The amounts of such insurance shall be as follows: Public liability insurance in an amount of not less than \$1,000,000 for injuries, including accidental death, to any one person and property damage insurance in an amount of not less than \$1,000,000. The certificate of insurance shall name the Borough of Chambersburg as an additional insured and shall be provided by an insurance company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough.
- B. If the parade or public gathering will include the sale, service, or consumption of alcohol, proof of liquor liability insurance coverage in an amount of not less than \$1,000,000 per occurrence must also be provided, with such policy naming the Borough of Chambersburg as an additional insured with said policy being provided by an insurance company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough.
- C. If a public gathering is to be located at a public place other than within a street, or is a block party involving the closure of one block of a street maintained by the Borough, and the public gathering involves less than 300 participants or spectators and does not involve the sale, service, or consumption of alcohol, the Borough Manager is authorized to waive the insurance requirements set forth herein, in his discretion. However, in the event the insurance requirements are waived, the applicant shall provide, prior to Special Event Permit issuance, an indemnification agreement in a form acceptable to, and established by the Borough Manager.
- D. The Special Event Permit will not be issued prior to receipt of the required certificate of insurance.

- E. If the parade or public gathering will include the sale, service, or consumption of alcohol, the Borough may require the applicant to provide private security for the event in an amount as determined to be necessary by the Chief of Police.

SECTION 9. The contents of Chapter 204, Section 204-9 are hereby amended to read as follows:

- A. The Borough Secretary, or designee, shall have the authority to designate an alternate date, time, duration, or course for any parade or public gathering for which a Special Event Permit is requested. This authority shall be exercised to accommodate competing demands on the use of public streets, parks, and public places. In addition, the Borough Secretary may adopt any reasonable conditions to better protect the public and ensure compliance with this ordinance. Any time, place, and manner limitations must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.
- B. The Chief of Police, or a designee thereof, shall have the authority to determine the necessary personnel, supplies, and equipment for any parade or public gathering. Acceptance of the Special Event by the applicant shall constitute acceptance of all permit conditions. NOTE: The Borough is not required to close streets for security (i.e., protection of the applicant or the participants or spectators of the parade or public gathering related to their actual or proposed message) purposes and is not required to provide police for security purposes at parades or public gatherings.

SECTION 10. The contents of Chapter 204, Section 204-12 are hereby amended to read as follows:

The Borough Secretary, provided the other requirements of this chapter are met, shall issue a Special Event Permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, it is determined that:

- A. The conduct of the parade or public gathering will not so substantially interrupt the safe and orderly movement of traffic within the Borough on and contiguous to the proposed route or at the proposed location so as to create a real and present danger to the health, safety and welfare of the residents of the Borough.
- B. The conduct of the parade or public gathering will not create a real and present danger to the health, safety and welfare of the citizens of the Borough by preventing firefighting equipment, ambulances, rescue vehicles and/or police vehicles from being able to reach any property in the Borough.
- C. The conduct of such parade or public gathering will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the Borough other than that to be occupied by the proposed line of march and areas contiguous thereto.
- D. The conduct of a parade or public gathering shall not require the diversion of so great a number of personnel as to impair normal police services within the Borough.

- E. The concentration of persons, animals and vehicles at assembly points of the parade or public gathering will not unduly interfere with proper fire and police protection or ambulance services to areas contiguous to such assembly areas.
- F. The conduct of such parade or public gathering will not interfere with the movement of emergency services en route to an emergency.
- G. The conduct of the parade or public gathering is not reasonably likely to cause injury to person or property, to provoke disorderly conduct or to create a disturbance. This excludes content of message.
- H. The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route or the public gathering will not unduly interfere with the movement of the public or emergency services.
- I. The parade or public gathering is not designed to be held primarily for private profit.

SECTION 11. The contents of Chapter 254, Article III, Section 254-18, Subsection (F)(6)(b) are hereby amended to read as follows:

- (b) All alcoholic beverages shall be consumed from disposable or non-disposable glassware or other drinking utensil provided by the permit holder. No alcoholic beverage shall be consumed directly from the original bottle or can in which it was obtained from the brewer, distiller, or other maker. No alcoholic beverage intended to be removed from the site shall be sold in or transported by patrons from the sidewalk café area except where expressly authorized during an event open to the public pursuant to Chapter 92 of the Code of the Borough of Chambersburg, entitled “Alcoholic Beverages”.

SECTION 12. The contents of Chapter 254, Article III, Section 254-18, Subsection (G) are hereby amended by replacing the entire contents thereof with the following:

- G. Events open to the public. All outdoor events open to the public, either on private property, not including establishments licensed by the Pennsylvania Liquor Control Board, or on public property, involving possession, distribution, or consumption of open containers of alcoholic beverages shall be governed by Section 92-3 of Chapter 92 of the Code of the Borough of Chambersburg, entitled “Alcoholic Beverages.”

SECTION 13. Savings Clause. In all other respects, the Code of the Borough of Chambersburg shall remain as previously enacted and ordained.

SECTION 14. Severability. The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause, or part thereof is, for any reason, held to be invalid, unlawful, or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses, or part of this Ordinance.

SECTION 15. Repealer. All provisions of previous ordinances of the Borough of Chambersburg, which are contrary to this Ordinance are expressly repealed.

SECTION 16. Effective Date. This Ordinance shall take effect immediately.

ENACTED, ORDAINED, AND APPROVED this _____ day of _____, 2019.

Heath Talhelm
President of Town Council

ATTEST:

Jamia L. Wright
Secretary of Town Council

Walter Bietsch
Mayor