

ORDINANCE NO.: 8 - 2007

OF

JUNE 11, 2007

AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN SECTION 110, ASSEMBLIES OF THE CODE OF ORDINANCES AND AMENDING SAME BY SUBSTITUTING THEREFOR A NEW SECTION 110 TO BE ENTITLED “ MASS GATHERINGS, PUBLIC EVENTS AND PERMITTING”

BE IT ORDAINED, by the Council of the City of Newburgh, New York that the language contained in Section 110, Assemblies, be and is hereby repealed in its entirety and that the same is hereby amended to read as follows:

Chapter 110, MASS GATHERINGS, PUBLIC EVENTS AND PERMITTING

Section 110: Findings and Purpose; Preamble.

The City Council finds and determines that public events held at various times throughout the year and at various venues within the City of Newburgh enrich the quality of life and enhance the recognition and celebration of our diverse cultural, historic, spiritual and artistic heritage. The City Council further finds that providing public spaces as an appropriate forum for the exercise of free expression is an affirmative obligation of government under the First Amendment of the Constitution of the United States and under the Constitution of the State of New York. The City Council further finds and determines that a system of organization and review is a necessary and appropriate method of preserving and protecting public health and safety, protecting property and facilities, coordinating emergency services and response, ensuring the flow of communications and transportation, maintaining compliance with applicable regulations and codes, and preserving public order while affording opportunity and access to public facilities in the best interest of the City of Newburgh and its citizens. To that end, this ordinance has as its purpose the lawful, necessary and appropriate regulation of the time, place and manner of mass gatherings and public events.

Section 110-1. Definitions.

APPLICANT OR SPONSOR ~ Any person(s) or entities seeking to hold a Mass Gathering or Public Event which is regulated hereunder and/or is subject to any provision of law, rule and regulation, or any part thereof, which is so subject, and which is subject to the review, inspection, regulation or enforcement of or by the City or other lawful authority.

CITY ~ Unless otherwise designated, the City of Newburgh; and its authorized officials, officers and employees.

NON-PROFIT or NOT-FOR-PROFIT or CHARITABLE – A corporation or business organization defined and qualifying as such under the laws, rules and/or regulations of the Federal government or of any state.

MASS GATHERING and/or PUBLIC EVENT ~ A gathering of ten (10) or more persons in such manner as shall have been planned in advance around a central theme or purpose which uses or occupies space on public premises including but not limited to public streets and sidewalks, public parkland, City-owned or controlled buildings, public waterways, public airspace, public highways and thoroughfares, docks, walkways, bridges, mains or transmission lines, berms, shoulders or lands auxiliary or adjacent thereto; in such manner as would interfere with, obstruct, preclude or otherwise impact the normal and ordinary use thereof by the general public; and all such uses as the City may regulate or control as to time, place and manner under the provisions of any and all applicable laws, rules and regulations. Such events shall include but are not limited to festivals, parades, rallies, fairs, celebrations, ceremonies, marches, demonstrations, exhibitions, performances, arts and cultural events, and any other occurrence involving public gathering and/or attendance which is not otherwise considered a matter of right under prevailing law such as to be exempt from governmental regulation.

VEHICLE ~ Any and all types and means, other than human beings, of carrying, transporting, displaying, offering, providing, selling or otherwise using for commercial purposes wares, goods, merchandise, products, foods, beverages, crafts, materials, clothing, or other items for sale or distribution; including but not limited to wagons, carts, pushcarts, automobiles, trucks, trailers, tables, platforms, benches, surfaces, or other such means of display and/or sales.

Section 110-2. Permits Required by and for Mass Gatherings and Public Events

A. Any person or entity wishing to hold a Mass Gathering and/or Public Event as defined herein on any public property or portion thereof owned and/or controlled by the City of Newburgh is hereby required to file a Permit Application and receive City approval thereof no less than twenty-eight (28) days prior to the holding of same. Such approval shall be given only upon satisfaction of all City requirements imposed as conditions thereof and as required hereunder.

B. Application for such Permit shall be made upon forms prescribed therefor by City. Application forms shall require, at minimum, the following information:

- i. The correct name and address and telephone number of the person and/or organization sponsoring or organizing the Mass Gathering or Public Event.
- ii. If the applicant is a corporation, organization, or association, the title of the individual completing the application as so authorized by said entity, and acting as the authorized representative of same.

- iii. The name of the person or persons in charge of organizing and conducting the event; and the name, title, address and telephone number including cellular telephone number and other contact information of the person who shall be present at and with operational responsibility and authority for the event.
- iv. If the applicant is a corporation, organization or association, the names, titles, telephone numbers and other current contact information of the chief executive officer(s) and other responsible persons in authority over same.
- v. The total number of people invited and/or expected to participate and to be present as attendees of the event.
- vi. All locations requested to be used and the dates and hours requested for each such use.
- vii. The sanitary facilities, if required under this ordinance, in addition to any already existing and present at the proposed location, which will be provided by the applicant.
- viii. Whether live or recorded music shall be utilized at the event, and if so, a description thereof including any means of broadcast and/or amplification.
- ix. Whether the applicant(s) has previously sought permits for mass gatherings, events or assemblies in public places and, if so, when and where.
- x. Whether any fees for participation and/or admission to the event are to be charged, and if so, the amounts and schedule of same.
- xi. A description of the nature of the event and the reason why public property is to be utilized.
- xii. Any provisions to be made or as may be required by any law, rule or regulation to accommodate persons with disabilities.

C. Except in the case of a spontaneous or similar event or exercise of free speech such as those in response to a contemporaneous occurrence, Permit Applications shall be filed no later than twenty-eight (28) days prior to the date(s) of any Event; and in any event not later than the time required for City to review same and to determine that all arrangements are satisfactory and sufficient to protect public health, safety and property. City shall waive such requirement and accept the filing of an application after the deadline for same if City determines that such late filing shall not have impaired the City's ability to adequately review the application and all arrangements necessary to hold the event as intended so as to safeguard the protection of public health, safety and property by evaluating same according to the criteria set forth herein; however

City shall have the right to deny any such Permit and prohibit such Event due to the late filing of an Application or other material failure to comply with City requirements as defined hereunder, including if such late filing shall have precluded or significantly impaired City's ability and opportunity to evaluate said application as provided under this Chapter.

D. Except as otherwise provided, the Applicant shall furnish a certificate of liability insurance covering the event to be held and naming the City of Newburgh as an additional insured with limits of liability of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate for bodily injury and \$50,000 for each occurrence and \$100,000 aggregate for property damage. All such policies must be written in the broadest form available by a company authorized to do business in New York State and of recognized financial standing which has been fully informed about the proposed event.

- i. The insurance coverage described hereinabove shall be increased by the City Manager for good cause. As used herein the term "good cause" shall mean that the circumstances of the proposed event shall include one or more of the following: the number of attendees and/or participants shall be 150 or more persons; the inclusion of any animals other than domesticated cats and dogs; the inclusion of ride-on attractions such as roller-coasters, carousels, ferris wheels or other such devices; the inclusion of equipment or devices requiring connection to electricity or other independently-generated energy sources or utilities including but not limited to water and/or sewerage treatment systems; the presence and/or use of fireworks, explosive devices, firearms, weapons, fire, chemicals or other inherently hazardous or dangerous devices or materials or activities. The amount by which the City Manager shall require an increase in such insurance coverage shall be no less than two (2) times the amounts in U.S. Dollars set forth in the preceding paragraph. In the event no such insurance coverage is available, the City Manager may prohibit such activity or circumstance from inclusion in the event.

E. Waiver or Reduction of Fees, Insurance and/or Security Deposit Requirements.

1. Notwithstanding the requirements to pay fees and/or provide insurance coverage and/or a security deposit or escrow account as set forth in this ordinance, the City Manager shall have the authority to and shall reduce and/or waive such requirements for all applicants who qualify for such reduction and/or waiver according to the following schedule and criteria:
 - i. If the applicant provides documentation showing that it is a not-for-profit and/or charitable organization organized and registered as such under the laws of the United States, the State of New York or any other state; or if the applicant sponsor or co-sponsor of the event is a municipality, municipal corporation or agency or a department or sub-division thereof no fees shall be charged, and no security deposit or escrow shall be required. Insurance coverage requirements as provided in Section 110-2 D shall remain in effect, unless reduced or waived as provided

therein or below, except that no separate policy of insurance shall be required of the municipal entities mentioned herein.

- ii. If the applicant is indigent, no fees shall be charged, and no security deposit or escrow deposit shall be required. Indigent applicants shall not be required to provide insurance coverage as required hereinabove. As used herein, the term “indigent” shall mean an individual with a gross annual income of less than Twelve Thousand (\$12,000.00) Dollars; or if the applicant is an organization, “indigent” shall mean having a gross annual income for the current or most recent fiscal year or organizational assets or a combined total of each of Twenty Thousand (\$20,000.00) Dollars or less.
 - iii. Should the applicant show good cause why it cannot comply with the requirements to provide insurance coverage as provide herein, the City Manager shall require applicants other than indigent applicants to provide a Security Deposit in the form of a bond or cash escrow account to be held by and in the name of the City of Newburgh in the amount of Ten Thousand (\$10,000.00) Dollars. As used herein the term “good cause” shall mean the unwillingness or inability of qualified insurers to provide the required policies for reasons unrelated to any wrongful or negligent acts or omissions of the applicant.
2. Applications for permits to hold events other than spontaneous or similar events or exercises of free speech such as those in response to a contemporaneous occurrence shall be accompanied by an application fee of Twenty Five (\$25.00) Dollars representing the administrative costs to the City for processing same.

Section 110-3. Location of Public Events.

A. The City shall have the authority to determine the location where all Public Events shall be held based upon the criteria hereinafter set forth. Such locations may be on the grounds of certain discreet public lands and facilities, including but not limited to: Delano-Hitch Recreation Park and facilities, Downing Park and facilities other City parks, park lands or open space, Activity Centers, Ann Street parking lot, Ferry parking lot, other City parking lots, Unico Park, Newburgh Landing, other City waterfront properties and facilities; or such City streets and thoroughfares as City shall approve of, determine and allow under the criteria set forth herein, and as shall be authorized and required hereunder.

B. The City shall authorize and permit the event to take place at the place and time requested by the applicant, provided however that the City shall have the right to provide a location and time as nearly equivalent to the requested location and time as possible if the City determines that holding the event as requested could reasonably be expected to create or result in circumstances which would pose a danger to public health and safety or a risk of damage or loss to public or private property or to the use thereof during or subsequent to the event. In evaluating such danger or risk, the City will consider the following criteria:

- i. The number of persons invited to and/or reasonably expected to participate in or attend the event, and the capacity and current condition of the site(s) and/or location(s) requested by the applicant.
- ii. The anticipated duration of the event;
- iii. The actual time of day or night during which the event is expected to or will occur;
- iv. The extent and dimensions of the area to be used for and occupied by the event;
- v. The specific facilities, sites and locations requested by the applicant to be used for the event, including such characteristics as their durability; cost of maintenance and repairs beyond that required by normal use, wear and tear; surface composition; design and normal and regular intended use; capacity; the presence of components of utility systems and infrastructure or sensitive ecological, environmental, historical or cultural assets; and/or the inclusion in the event of the use of explosives or other inherently dangerous, damaging or destructive instrumentalities;
- vi. The reasonably likely impacts and effects which the event will have upon persons or functions which will be displaced or precluded at the time or within a reasonably short time following the holding of the subject event if the subject event is held at the places and times requested by the applicant;
- vii. The apparent and inherent incompatibility of and between the times and places requested by the applicant and the types of activities reasonably anticipated to take place during the event. For example and not by way of limitation, events shall be considered apparently and inherently incompatible if the event will generate significant noise near or in a hospital or other quiet zone; or include lights or signs or visual obstructions such as can reasonably be anticipated to interfere with nearby vehicular traffic; or if the proximity of a site of ongoing construction could reasonably be considered to pose a danger to attendees; or if holding the event at the time and place requested by the applicant can be reasonably considered to cause or create a public nuisance.

C. In the event the City denies permission to hold the event at the time(s) and place(s) requested, the City shall promptly provide the applicant with written notice of such denial; and shall include in such written notice the reason(s) for such denial; and where appropriate, the City shall further notify the applicant of such other time(s) and/or place(s) when and where the subject event may be held which shall be as nearly equivalent to the requested time and place as shall be reasonably possible.

Section 110-4. Security Deposit and Escrow Account.

A. In addition to any insurance coverage required hereunder, City shall require of any and all Applicants and/or Sponsors a Security Deposit and/or Escrow Account for each such Public Event as defined herein and/or regulated hereunder according to the criteria set forth herein.

B. The City Manager shall reasonably determine the amount of such Security Deposit and/or Escrow Account, taking into account the following which shall be considered in making such determination:

- i. The number of persons projected to attend the Event.
- ii. The number of vendors, peddlers, booths, exhibits, rides, attractions, features, entertainments and other aspects of the Event.
- iii. The requirement of and the contents and provisions of any Safety Plan required for such Event; and/or requirements reasonably imposed by the City Code Enforcement Officer; and/or the City Engineer; and/or the Fire Chief; and/or the Police Chief; and/or the Corporation Counsel; and/or the City Manager related to established safety, security, engineering and/or legal considerations.
- iv. The size, dimensions and extent of the public properties, facilities and space projected to be used and occupied by the Event.
- v. The number of City staff and the number and time of hours of work required of the City to provide supervision and direct services in support of the Event and all persons in attendance thereof.
- vi. The history, background, and nature of the Applicant and/or Sponsor of the Event, specifically with respect to its longevity, budget, staff, history of compliance with City codes and regulations, local presence and contacts with the City community, and other factors relevant to the responsibility and accountability of same; but not with respect to any political platform, opinion or posture of same or with respect to any status or characteristic which is protected by or under the Federal or State Constitutions or any civil rights laws or caselaw determined thereunder; and not in such manner as may be discriminatory or subjective or arbitrary as may be prohibited by law.
- vii. The extent to which the Applicant and/or Sponsor will require special arrangements for such Event with respect to utilities, energy, lighting, vehicles, parking, connections, wiring, stages, platforms, scaffolding, control boards and panels, sound and amplification equipment, costumes, stage properties, private event staff and other materials, equipment and/or personnel.
- viii. Whether or not any animals will be involved in any aspect of the Event; and if so, the number, kind and characteristics of same; and their role in the Event and the

number, qualifications and experience of those charged with the control and supervision of same.

- ix. The number, kind and value of any and all City equipment, materials, vehicles and other properties owned or controlled by City and used by City in the supervision and control over said event; and the loss, damage, depreciation and/or wear and tear reasonably likely to be sustained by same.
- x. Any characteristic, component, portion or element of the Event which may be reasonably considered to be inherently dangerous.

C. City shall receive such Security Deposit, whether in money or property or both as City may determine, and keep and retain same in a protected and segregated manner. If Security Deposit shall take the form of cash, monies or funds, City shall deposit same in an Escrow Account. After the Event has concluded, City shall return such Security Deposit and/or Escrow Account to Applicant and/or Sponsor in the exact kind or amount deposited without interest, except for such monies or property of such value as shall fairly and accurately represent the cost to City incurred as a result of the Event, which shall be calculated and based upon such factors directly related thereto, including but not limited to those considerations as are listed or mentioned in Section B hereinabove. City shall provide Applicant/Sponsor with an itemized statement indicating all such costs and expenses and showing proper deductions therefor, and the balance to be returned by City to Applicant/Sponsor after making all such deductions therefrom.

Section 110-5. Safety Plan.

Before issuing any Permit as required hereunder, for events reasonably anticipated to involve more than one hundred (100) persons and/or to include activities defined elsewhere herein as inherently dangerous, City may reasonably require the Applicant/Sponsor to provide a Safety Plan designed to protect public health, safety and property before, during and after said event. Such Public Safety Plan shall be subject to the prior review and approval of the Chief of Police, the Fire Chief, the Code Compliance Supervisor, the City's Consulting Engineer and the City Manager, and shall comply with the requirements of any and all such City and public safety officials acting in their official capacities and employing their professional judgment on the basis of their knowledge and experience, and with the provisions of any and all applicable laws, codes, rules and regulations. Such safety plan shall include provisions for adequate and sufficient toilet and sanitation facilities, emergency medical response, communications and command control, safety and security, and other provisions applicable to events of such size and nature.

110-6. Scheduling.

City shall have the right to determine the times, hours, dates, durations and locations for all such Events held on City or public property, which shall be done in consideration of the factors enumerated in Section 110-4 B hereinabove. City shall be under no obligation to permit, allow or oversee any Event if other Events or activities are or will be anticipated to occur on the same day or

times within the City, and such other Events or activities will make demands upon City personnel, properties, equipment or facilities such as to raise the reasonable possibility that the demand upon same may be such as to preclude the City from accommodating multiple events in a lawful, responsible, safe and organized manner. City shall grant applications for the use of City locations, facilities and sites on a “first-come, first-served” basis and as described hereinabove.

110-7. Other permits and approvals.

- A. In addition to satisfying all requirements of City as provided herein, all Applicants/Sponsors shall fully comply with all other applicable laws, rules, codes, regulations and permit conditions as may be applicable and as may be overseen and enforced by any and all other governmental, municipal or legal agencies as may have jurisdiction thereover. City shall be under no obligation to grant a permit and/or allow an Event to be held in the circumstance that City has reasonably reliable knowledge indicating that any Applicant/Sponsor is not in compliance with any law, code, rule or regulation administered or enforced by any government agency applicable to the Applicant/Sponsor and/or the subject Event. City shall have the right to require the applicant to provide proof of compliance with all such requirements, and should the applicant fail to provide same, City may deny the applicant permission to hold such event on City premises.
- B. Other requirements. Based upon the factors and considerations mentioned and listed in Section 110-4 B and other sections hereof, City shall have the right to require any Applicant/Sponsor at its own cost and expense to provide such personnel and/or equipment as City may reasonably deem to be appropriate and necessary to ensure the safety and security of the public and/or public property before, during and after such Event, including but not limited to security personnel, communications equipment, medical and emergency response plans, services and vehicles, generators, lighting, sanitation facilities including toilets, garbage and trash collection and disposal facilities and services, parking and traffic control, and others, all of which shall be and remain subject to the oversight, supervision and control of City officials, officers and staff with supervisory responsibility for such Event and for City property. City may impose and/or mandate compliance with such standards and requirements as same shall be reasonably related to the public policies to be supported by this Ordinance.
- C. Prior to and during any Event, City shall have the right to prohibit any and all activity related to any Event from taking place upon or impacting any City property, facility, equipment, personnel, street, sidewalk or other public property owned or controlled by City, as same shall be consistent with City’s lawful rights, powers and duties as custodian, trustee and proprietor of the public properties and facilities owned, controlled and/or regulated by City under law, as same may be reasonable necessary and appropriate to protect and safeguard personal health and safety and prevent damage or loss to public or adjacent private property.

110-8. Denials of Applications for Permits

The City shall deny applications for permits to hold events for any one or more of the following reasons:

- i. The applicant has failed to complete and/or satisfy any of the requirements of the application procedure; or has failed to properly complete and/or submit the application form;
- ii. The applicant has failed to pay the required fees, and/or provide the required insurance coverage, or security or escrow account or deposit;
- iii. The applicant has a prior history of failing to comply with the terms, conditions and requirements of applicable laws, codes, rules and regulations in the holding of previous events or procedures applicable thereto;
- iv. The applicant has applied for permission to hold the event at such time and/or place which is not available for any of the following reasons, and no other equivalent, suitable or sufficient place and/or time is available to hold the proposed event.
 - a. The time and place applied for has been granted to another applicant who has filed a proper application prior to the subject application;
 - b. The safe and proper conduct and holding of the proposed event will require the dedication and/or use of City personnel, property, facilities or equipment at such time as same are not available by reason of force majeure, including but not limited to extreme weather conditions, fire, flood, public emergency, riot, labor unrest or other matters or causes beyond the City's control;
 - c. The applicant has applied to hold the proposed event at a location which is not a traditional public forum and it is not dedicated or suitable for the proposed use or for events involving the exercise of free speech or expression or other activities protected by the First Amendment; and/or for any of the reasons set forth in Section 110-3B hereinabove;
 - d. The granting of the application to hold or conduct the event in the time, place and/or manner described in the application and the holding or conduct of same as so described would result in a violation of one or more laws, code provisions, rules or regulations or the civil rights of any individual under Federal or State law; including but not limited to those relating to buildings, electricity

and other forms of energy, fire prevention, sanitation, food and beverages, toilet facilities, access to medical care, protection of property rights, protection of fair business practices and economic competition, public nuisances, noise, parking, intellectual property rights, occupancy, disorderly conduct, emergency response, and those applicable to the use of public parks and recreational facilities.

- v. In any case where a permit is denied under this section, the City shall provide the applicant with a written denial as set forth in Section 110-3C hereinabove; and the applicant shall be entitled to submit an amended application, in compliance with the time frame set forth in this Chapter, or a new application.

110-09. Release of City from liability.

The filing of an application and/or the use of City- or publically-owned property or facilities for an assembly, mass gathering or event shall be and operate as a release of the City of Newburgh and its officers, employees and agents from and against any and all claims, actions, losses, liability or damages of any kind arising out of or resulting from or caused by the occupancy or use of such property or facilities by any and all persons or groups participating or involved in said event; and the agreement of the applicant, sponsor, co-sponsor and organizer, jointly and severally, to indemnify defend and hold harmless the City of Newburgh and its employees and agents from same.

110-10. No Endorsement by City.

The granting of permission by City and/or the use of City- or publically-owned property or facilities by any person or group or organization shall in no way be considered an endorsement or any expression of support, disagreement or of any position or opinion of the City whatsoever with respect to the activities, policies, opinions, positions, precepts or other aspects of the persons or groups organizing, sponsoring, holding or participating in such event or use; and no person associated in any way with said event is authorized to or shall make any public statements or representations concerning the City of Newburgh concerning same.

110-11. Severability.

If any part, portion or provision of this Chapter shall be invalidated by reason of any law or decision of any court or other agency with authority or jurisdiction thereover, the remainder shall remain if full force and effect as the sense thereof may allow.

110-12. This Ordinance shall take effect immediately, as provided by the Municipal Home Rule Law and other laws of the State of New York.