

ORDINANCE NO. 18-11(1)

AN ORDINANCE TO AMEND CHAPTER 11, PARKS AND RECREATION, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 11, Parks and Recreation, is hereby amended and reordained as follows:

By Amending and Renaming:

Sec. 11-116 ~~Public meetings or parades~~ Special events; permitting.

Chapter 11. Parks and Recreation

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Sec. 11-116 ~~Public meetings or parades~~ Special events; permitting.

~~Public meetings or parades shall not be held within parks without the written permission of the director of parks and recreation.~~

A. Purpose. Pursuant to the authority granted by the Virginia Code and its police powers, the County enacts the following to provide for the public health, safety, peaceful enjoyment, fair and equal access, and general health and welfare of the public in using the County's parks and recreational facilities without unreasonable impairment. In order to accomplish this, the County must take reasonable measures to regulate and control the time, place, and manner of activities that would otherwise unreasonably infringe upon the general public's right to use and enjoy the parks and recreational facilities or would threaten or impair the public health, safety, and welfare of persons using the parks and recreational facilities. These permitting provisions are not intended to exclude any particular activity or communication of a particular content, but to coordinate multiple uses of limited space, to ensure preservation of the park facilities and resources, to prevent dangerous, unlawful, or impermissible uses, and to ensure financial accountability for damage caused by an event. In so doing, the County respects and encourages the exercise of the rights to free speech, free exercise of religion, and peaceable assembly in the parks.

B. Definitions. The following definitions apply to this section:

Chief of Police means the Chief of the Albemarle County Police Department.

Commercial activity means any act involving the buying, selling, trading, production, or exchange of goods, products, or services, and includes the offering of goods, products, or services for sale, trade, or exchange, and the engagement in, or soliciting of, any business.

Director means the Director of the Department of Parks and Recreation.

Expressive activity means a non-commercial event in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech, the free exercise of religion, or peaceable assembly, in a park.

Parade means any march, procession, or motorcade consisting of people, animals, or vehicles, or any combination thereof, within a County park that interferes with or has a tendency to interfere with the public's normal use of the park or its roadways, sidewalks, paths, trails, facilities, or amenities.

Park means, for the purposes of this section only, any parcel of land owned by, or under the control of, the County that is used or designated to be used by the public for recreational purposes, and includes any park that is jointly owned with the City of Charlottesville.

Public assembly means any meeting, demonstration, picket line, rally, festival, concert, event, tournament, or other gathering of 100 or more people for a common purpose as a result of advance planning.

Special event means: (i) any planned gathering or meeting of 100 or more people in or on a County park, including but not limited to a demonstration, athletic event or contest, festival, concert, parade, march, procession, protest, or public assembly; or (ii) any commercial activity, regardless of size or the number of people attending.

Spontaneous event means an assembly of any number of people that is caused by or in response to unforeseen circumstances or events resulting from news or affairs first coming into public knowledge within seven calendar days before the assembly.

C. Permit required. A permit issued by the Department of Parks and Recreation pursuant to this section is required for any person to conduct or participate in a special event in a County park unless the event or gathering is exempt pursuant to subsection (D).

D. Exemptions to permit requirement. The following events and gatherings are exempt from the requirement to obtain a permit pursuant to this section:

1. Spontaneous events;
2. Athletic, competitive, or instructional events, leagues, and tournaments organized, sponsored, or procured by the Department of Parks and Recreation individually or in conjunction with the City of Charlottesville Department of Parks and Recreation;
3. Events and activities sponsored or approved by the County School Board or the Superintendent of the County School Division;
4. Reservation of athletic fields or facilities through the Department of Parks and Recreation for athletic or competitive leagues or events sponsored by the Department of Parks and Recreation either by itself or in conjunction with the City of Charlottesville Department of Parks and Recreation, including but not limited to softball, soccer, football, baseball, ultimate frisbee, tennis, and lacrosse; provided that commercial and non-commercial private athletic or competitive events and tournaments, organized or conducted without Department of Parks and Recreation sponsorship, are not exempt and require a permit if they are a special event.
5. Students participating in educational activities under the immediate direction and supervision of the Superintendent of the County School Division or, for any park jointly owned with the City of Charlottesville, the Superintendent of the City School Division;
6. Shelter reservations for fewer than 100 people.

E. Permit priority and scope. The Director will grant permits on a first come, first served basis. Permits may provide for the exclusive use of a park or any designated area within a park. Any person may apply for and obtain a permit pursuant to this section, even if the special event does not require a permit, in order to reserve park areas.

F. Application. Each application for a permit is subject to the following:

1. When to apply for a permit. Any person intending to conduct a special event shall apply to the Department of Parks and Recreation for a permit at least 15 days before the date of the special event, but no more than 12 months before the date of the special event.
2. Contents of the application. The application shall be on a form prepared and provided by the Department of Parks and Recreation, and the Applicant shall provide the following information:
 - a. The name, address, and telephone number of the person requesting the permit;
 - b. The name and address of any organization or group the Applicant represents;
 - c. The name, address, and telephone number of the person who will act as the special event director, leader, or chair, and who will be responsible for managing or conducting the special event;
 - d. The type of special event intended to be held, including a description of all activities planned for the event;
 - e. The date and starting and ending times of the special event;
 - f. The requested location or locations and facilities to be used for the special event, including but not limited to roads, parking facilities, athletic fields or facilities, trails, paths, shelters, and open fields;
 - g. The special event entrance, assembly, and dispersal locations, including the specific entrance, assembly, and dispersal route plans;
 - h. The approximate number and description of people, animals, vehicles, and equipment that will participate in the special event, including but not limited to any tenting, staging equipment, seating, recording equipment, sound amplification equipment, fencing, banners, signs, flags, or other attention-getting devices to be used in connection with the special event;
 - i. A statement as to whether the special event will require closing or restricting any park road, area, or facility to the general public;
 - j. Verification of special event liability insurance coverage as provided in subsection (J);
 - k. A copy of any approved and valid permit, license, or registration required by any federal or State agency or department for any use, facility, or equipment;
 - l. Identification of the person who will be designated permit holder and carry the permit on each day of the special event as required by subsection (N).
 - m. Other information as the Director, the Chief of Police, the Fire Marshal, the Chief of Fire and Rescue may deem reasonably necessary in order to provide for traffic control, highway and roadway maintenance, property maintenance, administrative arrangements, police and fire protection, staff assistance and supervision, and the protection of public health, safety, and welfare.
3. Complete application. An application that provides all of the information required by subsection (F)(2) is a complete application.

4. Late applications, waiver. The Director is authorized to, and shall make reasonable efforts to consider, an application for a permit filed less than 15 days before the date of the proposed special event if the Director determines that waiving the application deadline will not pose an undue hazard or risk of harm to public safety and that good cause otherwise exists. In making this decision, the Director shall consult with the Chief of Police, Fire Marshal, Chief of Fire and Rescue, and they shall consider: (i) the date, time, place, and nature of the special event; (ii) the anticipated number of participants; (iii) other events scheduled for the parks at the same time or in the same park; (iv) the County or governmental services required in connection with the event; and (v) available County or other governmental resources.

G. Acting on a permit application. The Director shall act on a permit application as follows:

1. Approval deadline; when application deemed approved and exception. The Director shall act on an application within seven days after he receives a complete application. If the Director does not act on a complete application within seven days after he receives a complete application, the application is deemed approved and the permit shall be issued for the special event as described in the application; provided that a late application filed under subsection (F)(4) that is not acted on shall not be deemed approved, but shall be deemed denied.
2. Changes to timeline allowed. The Director and the Applicant may agree to change the date by which the Director must act on the application.
3. Approval criteria. The Director shall apply the following criteria in determining whether to approve an application and grant a special event permit:
 - a. The time, duration, route, and size of the special event will not unreasonably interrupt the safe and normal use of the park or recreational facility by the general public;
 - b. The conduct or nature of the special event will not require diversion of so great a number of police and fire and rescue personnel to properly police the special event and the areas contiguous thereto so as to impair or compromise the normal protection of the remainder of the County;
 - c. The Applicant has, where appropriate, identified persons as monitors to sufficiently control the orderly conduct of the special event in conformity with the special event permit;
 - d. The Applicant has agreed, where appropriate, to be responsible for obtaining appropriate traffic control devices installed in accordance with the Uniform Manual on Traffic Control Devices to close roadways to vehicular traffic sufficient to control the orderly conduct of the special event;
 - e. The special event will not interfere with another special event for which a permit has been granted or any other event for which a park or recreational facility has been previously reserved; and
 - f. The special event will not violate and will conform to all applicable local, State, and federal laws.
4. Denial criteria. The Director may deny the application only for one or more of the following reasons:
 - a. The application, including any necessary or required attachments or submissions, is incomplete or not fully executed;

- b. The application contains materially false or misleading information;
 - c. The Applicant has not tendered the required application fee with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, or security deposit within the times prescribed by the Director;
 - d. The Applicant is legally incompetent to contract or to sue or to be sued;
 - e. The Applicant or the person or organization on whose behalf the application was made has:
 - (i) on a prior occasion damaged a park property or facility; (ii) has not paid in full for prior damage to a park property or facility; or (iii) has any other unpaid debt owed to the County through the Department of Parks and Recreation;
 - f. The Department of Parks and Recreation has received a prior, fully executed application that is for the same time and place and the Director has issued or will issue a permit authorizing a special event that will not reasonably permit multiple occupancy of the particular park or a part thereof or will not permit the County or the Department of Parks and Recreation to devote appropriate resources to facilitating or monitoring the special event;
 - g. The special event would conflict with previously approved planned programs or activities organized, planned, or sponsored by the Department of Parks and Recreation for the same time and place;
 - h. The special event is inconsistent with the customary uses of the park or cannot be accommodated in the park because it lacks the physical improvements required for the special event;
 - i. The Applicant has not or cannot comply with applicable licensure requirements, insurance requirements, or health or safety laws pertaining to the sale or offering for sale of any goods, products, or services;
 - j. The Applicant has not obtained any required permit from the Virginia Department of Transportation to use a public highway or property under its control and jurisdiction;
 - k. The special event, or any activity planned or promoted to occur during the special event, either because it is expressly identified in the application or because the Director has verified that it is planned or promoted to occur, is prohibited by law; or
 - l. The special event, or any activity planned or promoted to occur during the special event, either because it is expressly identified in the application or because the Director has verified that it is planned or promoted to occur, would present an unreasonable danger to the health, safety, or welfare of the Applicant, the participants, the attendees, or any person in the park not participating in the special event; however, the Director shall limit consideration of this factor to the special event's activity and shall not consider the expected reaction or response of hostile members of the public or counter-demonstrators.
5. Notice of denial, appeal. If the Director denies an application, he shall attempt to notify the Applicant promptly by telephone or email and shall promptly mail or email the Applicant a written explanation of the reasons for denial. The written notice of denial shall inform the Applicant of the right to appeal the denial as provided in subsection (O).
6. Preservation of content neutrality. The Director shall not deny an application because of: (i) political, social, or religious reasons; (ii) the content of the views expressed in the application

or intended to be expressed at the special event; or (iii) the expected conduct of non-participants, spectators, or bystanders.

H. *Conditional permit.* In denying an application for a special event permit, the Director may offer a conditional special event permit reasonably modifying the special event's date, time, location, terms, and conditions. The Director may offer a conditional special event permit contemporaneously with a notice of denial or at any time after the notice of denial. In formulating a conditional special event permit, the Director shall not consider the content of the views expressed in the application, the intended or expected views to be expressed at the special event, or the expected conduct of non-participants, spectators, or bystanders. The Director shall not consider the need for or cost of public safety personnel required to be present to protect special event participants and attendees from hostile members of the public or counter-demonstrators or for general law enforcement in the vicinity of the special event. An Applicant desiring to accept a conditional special event permit shall file a written notice of acceptance with the Director. An Applicant who accepts a conditional special event permit shall meet all terms of the Director's offer and shall otherwise conform to the requirements of a special event permit issued under this section.

I. *Duty to indemnify, hold harmless, and defend.* All special event permits shall be conditioned as follows:

1. *Indemnification.* Defend, protect, indemnify fully, and hold the County of Albemarle and its boards, officers, employees, agents, and volunteers free and harmless from and against all claims, damages, expenses, loss, or liability of any kind resulting from any willful, reckless, or negligent acts or omissions of the Applicant or the Applicant's officers, agents, representatives, partners, employees, and invitees in connection with the permitted special event; and
2. *Hold harmless.* At the Applicant's own cost, risk, and expense, defend any and all claims and all legal actions that may be commenced or filed against the County of Albemarle and its boards, officers, employees, agents, and volunteers, and to pay any settlement entered into and to satisfy any judgment that may be entered against the County or its officers, employees, agents, or volunteers as a result of the willful, reckless, or negligent acts or omissions of the Applicant or the Applicant's officers, agents, representatives, partners, employees, or invitees in connection with the uses, events, or activities occurring under the special event permit.
3. *Written agreement.* The Applicant shall agree to the requirements of subsections (I)(1) and (I)(2) in writing.
4. *Additional requirement for jointly owned parks.* For special event permits granted for parks jointly owned by the County and the City of Charlottesville, this condition must also include and cover the City of Charlottesville and its council, officers, employees, agents, and volunteers.
5. *Waiver of requirements.* The requirements of this subsection may be waived as provided in subsection (L).

J. *Special event insurance.* The Applicant shall maintain in full force and effect on each day of the permitted special event a policy of insurance from a reliable insurance company authorized to do business in the State.

1. *The County as named insured or additional insured; additional requirement for jointly owned parks.* The policy shall include the County of Albemarle and its boards, officers, employees, agents, and volunteers as named insureds or additional insureds. For a special event to be held in a park jointly owned by the County and the City of Charlottesville, the policy must also include the City of Charlottesville, its council, officers, employees, agents, and volunteers as named insureds or additional insureds.

2. *Type and amount of insurance.* The policy shall provide coverage that the Director, in consultation with the Risk Manager for the County of Albemarle, determines to be necessary based on: (i) the estimated number of persons that will be attending the special event; and (ii) the nature of the park that will be used during the event.
 3. *Certificate of insurance.* The Applicant shall provide a certificate of insurance to the Director prior to the issuance of the permit.
 4. *Waiver of requirements.* The requirements of this subsection may be waived as provided in subsection (L).
- K. *Special event permit fees.* The Director may charge a reasonable fee to apply for a special event permit as follows:
1. *Fee schedule, publication.* The County Executive shall establish annually a fee schedule in consultation with the Director by July 1 of each year. The Director shall cause the schedule to be published on the County's website and in the Office of the Department of Parks and Recreation. The fee schedule shall be based upon the size of the special event, facilities, and equipment to be used, restrictions on the public's access to the park, the purpose of the special event, and Department staff time needed to prepare or attend the special event.
 2. *Minimum fee required.* The schedule of fees shall include a minimum fee for any park reservation regardless of the size of the assembly or event.
 3. *Untimely payment, revocation.* If all applicable fees are not paid in full at least seven days before the date of the special event, then the Director shall have the authority to revoke the special event permit.
 4. *What fees do not pay for.* Fees do not include or cover incidental expenses associated with complying with the special event permit, including but not limited to signage, traffic planning, safe road crossings, private security, off-duty police, emergency and rescue services, medical staff, water rescue, lifeguards, other incidents related to protecting the safety of participants and attendees, equipment rental and procurement, and bathroom facilities. The incidental expenses are the sole responsibility of the Applicant.
 5. *Waiver of requirements.* The requirements of this subsection may be waived as provided in subsection (L).
- L. *Waiver of requirements to indemnify, hold harmless, provide insurance, pay fees.* The requirements to indemnify, hold harmless, insure, and pay fees as provided in subsections (I), (J), and (K) shall be waived or reduced for any non-commercial special event held for the primary purpose of expressive activity upon a written showing to the satisfaction of the Director that the Applicant is financially unable to perform the requirements of those subsections and that the right to engage in expressive activity would be unreasonably curtailed by the failure to waive one or more of the requirements.
1. *When an Applicant is ineligible for a waiver.* An Applicant is not eligible for a waiver of the requirement to indemnify, hold harmless, or provide insurance if there is a demonstrable history of personal injury or property damage claims attributable to the Applicant, the Applicant's associates, or its assigns or successors in interest in the conduct of previous events that were similar in nature to the proposed special event.
 2. *When an Applicant may reduce or avoid the requirement to provide insurance.* An Applicant may reduce or avoid the requirement to provide insurance if it designs the event in cooperation with the Director so as to limit specific risks and dangers to the participants, attendees, public, and

property. Regardless, insurance may be required for collateral activities such as food service and the use of structures or equipment that may present a demonstrable risk or hazard.

M. *Compliance with directions and conditions.* Every person to whom a special event permit is issued under this section shall comply substantially with all special event permit terms and conditions and with all applicable laws. The special event director, leader, or chair shall personally carry the permit and have it available for inspection upon request by the Director or any public safety or law enforcement officer during the conduct of the special event. Failure to possess or produce the special event permit shall be grounds for the immediate cancellation of the special event.

N. *Revocation of permit.* A special event permit may be revoked as follows:

1. *Revocation by the Director before or during the special event.* The Director may revoke any special event permit issued pursuant to this section either before or during the permitted special event if: (i) any information supplied by the Applicant is discovered to be false or intentionally misleading; (ii) any material term, condition, restriction, or limitation of the permit has been substantially violated; (iii) there is any continued violation of the terms, conditions, restrictions, or limitations of the special event permit after the Applicant or the Applicant's agent or employee is notified of a violation of the permit by the Director; (iv) the Applicant becomes unable to fulfill the terms of the special event permit on a timely basis; or (v) unforeseen or emergency circumstances arise that would have warranted the Director to deny the application previously.

a. *Notice of revocation.* The Director shall notify the Applicant of a revocation as expeditiously as possible, including by telephone, email, or fax. The Director shall mail notice of revocation to the Applicant and shall include in writing the reasons warranting revocation. The Director shall notify the Applicant of the right to appeal the revocation as provided in subsection (O).

b. *Agreement to conditional special event permit.* The Director's revocation of a special event permit may be accompanied by a conditional special event permit and shall not bar the Applicant and the Director from agreeing to a conditional special event permit.

2. *Revocation by the Director or the Chief of Police on the day of the special event.* The Director or the Chief of Police may revoke any special event permit issued pursuant to this section on the day of the special event if: (i) the Applicant or its designated permit holder cannot produce the permit and have it available for inspection upon the Director's or any law enforcement officer's request; (ii) upon a violation of any material term, condition, restriction or limitation of the permit; (iii) upon any continued violation of the terms, conditions, restrictions, or limitations of the special event permit after the Applicant or the Applicant's agent or employee has been notified of a violation of the permit by the Director or an appropriate law enforcement official; (iv) upon emergency circumstances; or (v) upon the event becoming an unlawful assembly under the Virginia Code; provided that the arrest of participants in the special event, in and of itself, is not cause to revoke the special event permit.

O. *Appeal.* An Applicant whose application for a special event permit is denied, or whose special event permit is revoked under subsection (N)(1), may appeal the decision as follows:

1. *Administrative appeal.* An Applicant aggrieved by the Director's decision may appeal the decision to the County Executive. The appeal shall be filed in writing with the Office of the County Executive within five business days after receiving a notice of denial or revocation. The written notice of appeal shall state all grounds for the appeal. The County Executive shall act upon the appeal within five business days after its timely filing, but in any case at least two days before the date of the proposed special event, unless the Applicant otherwise agrees.

Notice of the decision shall be given by the County Executive to the Applicant as expeditiously as possible, including by telephone, email, or fax. The decision shall also be mailed to the Applicant and shall include the reasons for the decision. Neither the pendency nor absence of an appeal shall bar the Applicant and the Director from agreeing to a conditional special event permit.

2. Judicial appeal. An Applicant may challenge the Director's and the County Executive's decision in a court of competent jurisdiction in accordance with State and federal law. The County shall meet all deadlines set by the court and by applicable statutes and court rules, and shall otherwise seek to ensure that the challenge, including any motion for preliminary relief, is decided as expeditiously as possible. An Applicant is not required to appeal the Director's decision to the County Executive before challenging the Director's decision in court.

P. Non-interference with assemblies and special events. The following acts are prohibited:

1. Interference. No person shall hamper, obstruct, impede, or interfere with any assembly, parade, demonstration, gathering, event, or with any person, vehicle, or animal participating or used in the assembly, parade, demonstration, gathering, or event for which a special event permit has been issued in accordance with the provisions of this section.
2. Driving through events. No driver of a vehicle shall drive between the vehicles, persons, or animals comprising an assembly, parade, demonstration, gathering, or event except upon a law enforcement officer's direction. This prohibition shall not apply to emergency vehicles such as fire apparatus, ambulances, and police vehicles, or to vehicles authorized to so drive pursuant to the special event permit.
3. Parking. The Director and the Chief of Police are each authorized, when reasonably necessary, to prohibit or restrict the parking of vehicles at any location within the park in which a special event or other lawful assembly is located. The Director and the Chief of Police may post signs to that effect. It is unlawful for any person to park or leave unattended any vehicle in violation of a posted sign or in violation of the personal directive of the Director or the Chief of Police.

Q. Penalties. A knowing, willful, or intentional violation of any condition of a special event permit or provision in this section shall constitute a class 1 misdemeanor.

(9-12-79; Code 1988, § 14-6.10; Ord. 98-A(1), 8-5-98)

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I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	Aye	Nay
Mr. Dill	_____	_____
Mr. Gallaway	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Randolph	_____	_____