

Transylvania County Mass Gathering Ordinance

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1. PURPOSE AND JURISDICTION:

The intent and purpose of this ordinance is to provide for the protection of the public health, public welfare and public safety of those person in attendance at mass gatherings held in the County and of those persons who attend or who reside near or are located in proximity to the sites of such mass gatherings or are directly affected thereby. This purpose is to be executed with due consideration to the fiscal implications of enforcing this ordinance. Nothing herein is intended or shall be used to impose any duties on Transylvania County for purposes of claims or causes of actions arising by a failure to properly execute this ordinance, and no third party shall have any claims related to the same.

The State of North Carolina grants to Transylvania County the Authority, power and jurisdiction over mass gatherings, as defined below, throughout the County of Transylvania.

2. DEFINITIONS:

AMPLIFICATION-Noises above and beyond the ordinary noises of the mass gathering area and which are caused by some sort of man-made noise enhancement system.

ATTENDEE- Any person who attends the event, whether for payment or not, who is not an employee or agent of the event sponsor, or who is not providing a public service associated with the event, and who is not a performer or service provider at the event.

BOARD OF HEALTH- The Transylvania County Board of Health.

BOND- This is the performance guarantee that is required to receive permission from Transylvania County to hold the mass gathering event within the County and shall be determined as set forth herein.

COUNTY MANAGER- The County Manager of Transylvania County.

ENVIRONMENTAL HEALTH SPECIALIST- Qualified Representative of the Transylvania County Board of Health.

EVENT SPONSOR- The person or company (also called the "Operator") responsible for the mass gathering (to be held liable for all Public Costs, claims, liabilities, or causes of action resulting from the mass gathering or

any of its invitees or participants), including but not limited to the management of the event and the area, promotion, and/or collection of any fees charged. Event Sponsor is required to be on site and present at the event at all times.

EXEMPTIONS- Events sponsored or sanctioned by the City of Brevard, Brevard Chamber of Commerce, the Heart of Brevard, Brevard College, Transylvania Community Hospital TCH Foundation, The State of North Carolina, The United States of America, Transylvania County, Transylvania County Schools and Agencies, Religious Institutions any legally- recognized Not-for-Profit Organization, any not-for-profit events sponsored or sanctioned by Transylvania County, and any events with less than 300 attendees.

FINANCIAL ASSURANCES- Any form of insurance, bonding, financial capitalization, financial accountability or other assurances required by County, in its sole discretion, to insure that there will be compliance with this ordinance and to insure compliance with documents, plans and proposals submitted to the County by the Event Sponsor.

FEES-Application fees shall be charged by the County for all commercial mass gatherings unless otherwise exempt, in addition, to costs incurred by the County for a Mass gathering.

HEALTH DIRECTOR- The Health Director of Transylvania County or his/her authorized representative.

INELIGIBLE MASS GATHERING-

1. Any event that is substantially continuous for greater than or equal to fourteen (14) hours;
2. Any event that occurs in whole or in part before 9:00 am or after 11:00 pm (shall be presumed to have an adverse impact unless Event Sponsor demonstrates to the County, in the County's sole discretion, to the contrary);
3. Any event that has greater than 2000 total attendees;
4. Any event that has an adverse impact on the areas adjoining the mass gathering or the Transylvania County communities, or
5. Any event that falls within the definition of mass gathering, but for which no provisional and final applications have been made and approved (this event cannot be held in this County).

MASS GATHERING- Any event that has between 300 to 2000 total attendees.

MASS GATHERING AREA- Any place maintained, operated, or used for mass gathering or assemblage (or by its attendees), except where the mass gathering is to occur within an established permanent stadium, arena, auditorium or other type of permanent building that is enclosed (and/or protected by a roof), floor and has sufficient existing permanent facilities (sanitary, parking, seating) to handle the number of attendees and other persons to be located in the area during the event.

NUISANCE- Means and includes any of the following:

1. Any public or private nuisance known at common law, North Carolina statute, or in equity.
2. Any attractive nuisance known at common law, North Carolina statute or in equity.
3. Any condition which violates local, state, or federal environmental or health laws, ordinances and/or regulations.
4. Any condition which violates the sensibilities of reasonable persons so as to pose a potential threat of harm to health or so as to pose a potential threat to the safety, use and/or enjoyment of the local environment.

PERSON- Any person, firm, corporation or other organization of any kind which holds, sponsors, organizes, conducts, or promotes, jointly or severally, a mass gathering.

PUBLIC COSTS- Those costs incurred directly or indirectly by the County in connection with a mass gathering that would not be incurred by the County if the mass gathering was not held.

REFUSE- All combustible and non-combustible putrescible and non-putrescible solid or liquid waste.

SANITARY FACILITIES- Toilets, privies, lavatories, urinals, drinking foundations and service facilities or rooms for the installation and use of these units.

SECURITY GUARD- Any person clearly identified by Event Sponsor as security personnel and if qualified as set forth herein.

3. PERMITTING PROCESS-APPLICANT

- A. Provisional Permit –Greater than or equal to 60 days before mass gathering (“event”).
 - i. The Event Sponsor must present a completed Provisional Permit Application and seven (7) copies (See Exhibit A for a list of items to be included in this Application) to the County

Manager sixty (60) days or more prior to the date of the scheduled event.

- ii. Transylvania County shall have exclusive jurisdiction and discretion to grant or refuse to grant a Provisional Permit under the terms and conditions set forth herein unless the event is exempt or ineligible, with the latter not allowed in this County.
- iii. Notwithstanding any other provision or condition in this ordinance to the contrary, the County does not have any discretion to approve an application if the following circumstances exist:
 - 1. The event has a prior history of criminal behavior by its attendees, violations of this ordinance, substance abuse by its attendees, or other evidence of dangerous or improper behaviors for a public event so as to put members of the general public in danger.
 - 2. The event or event sponsor has a past history or experience with environmental or health risks or problems at this or similar events.
 - 3. The mass gathering area is not conducive to providing a safe, healthy, or functional area for the type of event or for the number of attendees and other persons to be present at the event.
 - 4. The event sponsor is unable to obtain the required bonds and/or assurances.
 - 5. The event sponsor does not complete all required applications.
 - 6. The event sponsor and landowner do not have the required insurance to cover the event.
 - 7. The event sponsor and landowner refuse to indemnify the County (its departments or cities) and hold it harmless from any and all liabilities, claims or causes of action resulting from the mass gathering event or the application process itself.

B. Application Plan and Conference-Provisional Permit-When the complete Provisional Permit (Application and Copies) has been presented, along with proof of ability to obtain financial assurances, then the process (a thirty [30] day process) for approval or denial of such application is as follows:

- i. Within seven (7) days of the tender of such application the County Manager shall submit the application to the following departments for an assessment of the application and for estimates of costs to be ultimately borne by the event sponsor.
 - 1. Transylvania County Health Department
 - 2. Transylvania County Sheriff

3. Transylvania County Emergency Management
 4. Transylvania County 911
 5. Transylvania County Finance Director
 6. Transylvania County Solid Waste Department
 7. City of Brevard or City of Rosman if within those city limits.
- ii. Within ten (10) days after the submission of the application by the County Manager, these departments or cities shall report to the County Manager as to whether or not the application is approved by that department or city and shall submit a cost estimate for the direct or indirect expenses (public costs) anticipated from that department or city with respect to that event.
 - iii. If a department or city does not approve the application, the County Manager shall contact the event sponsor within five (5) days of such denial, and shall give any stated reasons for such denial to the event sponsor, and the event sponsor shall have an additional five (5) days from the date of contact to fix or cure the reason(s) for such denial, evidence of which must be submitted in detailed writing to the County Manager who shall have the remaining three (3) days to determine if the revised plan cures the concerns of the department or city, and if it does not, the application will be automatically denied on the thirtieth (30th) day after receipt of the application.
 - iv. If the application is approved, event sponsor must immediately tender on the 30th day the bonds and assurances required herein.
 - v. The application fee for submission of the provisional application is \$1000, a nonrefundable fee.

C. Final Permit- The final permit may only be applied for after approval of the provisional permit and it must be applied for and received at least three (3) business days and at least 72 hours prior to the beginning of the event and the process is as follows (no final permit applications can be received less than three business days prior to dates in which County offices are not open):

- i. The Final Permit Application shall contain all of the information and shall comply with the checklists listed in Exhibit B.
- ii. The Final Permit Application shall require an additional \$500 fee.
- iii. The Final Permit Application cannot be accepted without proof of bonds and assurances as required herein.
- iv. Transylvania County may visit the site of the mass gathering area, which may be done within 72 hours of the receipt of

this final application, to confirm that the information submitted in the provisional and final permit applications is accurate before giving final approval to hold the event.

- v. The County Manager shall contact the event sponsor within thirty six (36) hours of the beginning of the event, and if the application is denied, the County Manager will give reasons for the same and the event sponsor shall have up until twelve (12) hours before the event to correct any problems with the final permit application and the circumstances at the site of the mass gathering area.
- vi. Notwithstanding any other provision to the contrary, if the County Manager or the Board of Commissioners determines that the event is not in the best interest of the County (based on information not previously disclosed or reasonably known during the provisional permitting process,) its residents or those who visit the County, then the final permit may be denied in the County's discretion.
- vii. If ultimately denied, Event Sponsor shall make every reasonable attempt to notify the public in a timely manner.

D. Additional considerations for all permits, whether provisional or final-

The County Manager shall take into account the following factors (this not a comprehensive list but which is a list intended to guide the County Manager and its departments or the cities within the County when assessing an application for an eligible mass gathering event.) The following factors are intended to protect the health, welfare and safety of those attending mass gatherings, and of other persons who may be affected by mass gatherings.

- i. Activity Area- An activity area shall be provided of sufficient size to accommodate the estimated number of persons reasonably expected to be in attendance at any one time. The activity area is in addition to those areas required for parking and camping, and for a command post.
- ii. Distance from Dwellings- No part of the perimeter of the activity and camping areas shall be within 500 feet of any residence unless the occupant or owner has signed a written waiver. Notarized copies of any such waivers shall accompany the application. The waiver must be dated and can be no older than 12 months.
- iii. Distance from Certain Public Water Supply Sources- No part of the perimeters of the activity and camping areas shall be located within one mile of a Class I and Class II reservoir, as classified by NCDENR, Division of Environmental Health, Public Water Supply Section.

- iv. Camping Area- An area of adequate size, at least 100 square feet per person; shall be provided and dedicated for camping if those attending or some of those attending will be staying overnight. Such area shall be in addition to the areas provided for activities and parking.
- v. Command Post- An adequate command post at a conveniently accessible location approved by health, law enforcement and other relevant governmental agencies shall be provided for the use of said agencies. The command post shall consist of at least one building or mobile unit equipped with an adequate number of telephones, and other utilities, and an adequate number of parking spaces. The event sponsor shall insure access to it at all times by such governmental personnel.
- vi. Ingress and Egress Roads; Entrances and Exits- The event sponsor shall provide personnel and arrangements (to include obtaining permission) necessary to keep entrances and exits to public highways open to traffic at all times. The event sponsor shall make arrangements with private parties and/or consult with the N.C. Department of Transportation regarding adequate ingress and egress.
- vii. Parking- Parking facilities shall be provided off public roadways and rights-of-way sufficient to serve the reasonably expected requirements at a rate of up to 100 passenger cars per acre and 30 buses per acre. One parking space for cars shall be provided for each two people expected to attend. Camper class vehicles shall park in the camping area. Parking on shoulders of public highways shall not be permitted and temporary signs shall be erected by the applicant to so indicate.
- viii. Plan for Limiting Attendance; Exclusion of Non-Ticket Holders; Crowd Control; Security Enforcement- The application for permit shall be accompanied by a written plan for limiting attendance to the number stated in the application for permit, the exclusion of persons not holding tickets, and a written plan for security guards to be provided for internal and external crowd control and security enforcement. The plan shall be accompanied by a written statement by the Sheriff or Chief of Police, or an authorized representative (depending on jurisdiction), that the plan meets the minimum requirements of this ordinance, or greater. The event sponsor shall execute the plan.
- ix. Dust Control- The application shall be accompanied by a written plan for dust control. The event sponsor shall execute the plan.
- x. Fire Prevention and Control- The application shall be accompanied by a written plan for fire prevention and control, to be approved by the Fire Marshal.
- xi. Plans for Emergencies- The application shall be accompanied by written plans for dealing with emergency situations involving the

occurrence of incident involving rapid evacuation, including arrangements for use of emergency egress roads, if deemed necessary by the County Manager.

xii. Provisions for Adequate Medical Care- The application for permit shall be accompanied by a written plan for the provision of adequate medical care, such plan having been approved in writing by a qualified licensed medical physician with expertise in the area of emergency medical management. At the time of inspection noted in this ordinance, the structure and all supplies and equipment provided for in the plan shall be in place or are guaranteed or planned, and the agreements and statements provided for in the plan shall be determined to be valid. The plan shall include provisions for:

1. At least one enclosed covered structure to be used as a medical treatment center. The structure shall provide at least a total of 400 square feet and have hot and cold running water under pressure from an approved source.
2. A list of medical supplies and equipment sufficient to support reasonably anticipated attendance at the mass gathering.
3. Notification of all general public hospitals within 20 miles of the mass gathering location as to the scheduled dates and anticipated attendance of the mass gathering. (ex.-Copies of certified letters).
4. The name and address of at least one licensed ambulance or EMS service to be responsible for providing emergency transportation. A signed, notarized statement by an official of the agency accepting this responsibility shall accompany the plan.

xiii. Water Supply-Water supplies shall meet the requirements in 15A NCAC 18A. 1700.

1. The water supply used shall be located, constructed, maintained and operated in accordance with the Commission for Health Services' rules governing water supplies. At least once a year, a sample of water shall be collected by an Environmental Health, Specialist and submitted to the Division of Laboratory Services or other laboratory certified by the Department of Environment & Natural Resources to perform bacteriological examinations. The water supply and the facilities for distributing and dispensing shall be provided with effective safeguards to prevent the introduction of hallucinogenic drugs or other contaminants.

2. Cross connections are prohibited. All plumbing fixtures for potable water shall be provided and installed as required by the North Carolina State Building Code.
3. If a new source of water supply is to be provided, the Application shall be accompanied by the necessary plans, engineer's report, and specifications (in triplicate) as required for review and approval by the Division of Environmental Health, Public Water Supply Section, and the application shall include plans, engineer's report, and specifications for an emergency source capable of supplying at least three gallons per day per person. If waster is to be hauled from an off-site source, storage facilities shall be provided in the area sufficient in volume to supply the needs of the gathering for its duration. Before being filled with water for use during the gathering, all such storage tanks shall be cleaned thoroughly, filled with clean water containing a chlorine residual of at least 100 parts per million, and, after a contact time of at least 24 hours, all such tanks shall be emptied. Subsequently and prior to the issuance of a permit, all such tanks shall be closed and locked so as to give positive protection against the introduction of contamination.
4. Water outlets shall be provided at an adequate number of convenient and readily accessible locations properly distributed throughout the activity and camping areas.

xiv. Toilet Facilities-Sewage Disposal

1. Sanitary toilet facilities shall be provided at an adequate number and readily accessible locations properly distributed throughout the activity and camping areas at a rate of not more than 100 persons per toilet seat.
2. If chemical toilet rental service is to be employed, all toilets shall be so located as to be readily accessible by service vehicles and shall be serviced as often as necessary. Material removed from such toilets shall be disposed of in a public or community sewerage system, or in an approved area that has been permitted as a septage disposal site by NCDENR, Division of Water Management Disposal must be done by a permitted septage management company.
3. If water carried sewage facilities are permitted, the sewer system shall be connected to a public or community sewerage system having waste water

treatment facilities of adequate capacity to treat the flow of waste water from the mass gathering. The application shall be accompanied by a representative of the owner/operator of the treatment facility attesting to its adequacy. No sewage shall be discharged on the ground or into any watercourse.

xv. Solid Waste Collection and Disposal-Facilities shall be provided for all solid wastes to be collected and stored in leak-proof, non-absorbent containers, and all solid wastes shall be removed daily or more often if necessary and disposed of at the Transylvania County Landfill. Approved receptacles shall be provided at places conveniently located throughout the activity, camping and parking areas, and at each food service facility for the disposition of solid wastes. If bulk solid waste storage containers are used, at least two (2) containers of four(4) cubic yard capacity or greater, shall be provided per 1,000 persons in case of twice daily removal and these containers shall be so located as to be accessible to solid waste service vehicles.

xvi. Food Dispensing-Sanitary food dispensing facilities shall be provided at accessible and convenient locations, and shall be maintained in a sanitary condition. Perishable food items dispensed from such facilities shall be limited to pre-packages items such as wrapped sandwiches, prepared in commercial establishments and under official supervision, and shall be dispensed in unbroken packages, provided that chicken, hamburgers, pork, hot dogs, etc. obtained from approved sources may be cooked and packaged at the site if all operations of preparation, cooking and packaging for dispensing to individuals are done inside an approved structure or vehicle, in a sanitary manner, and otherwise in compliance with 15A NCAC 18A.2600, "Rules Governing the Sanitation of Restaurants and Other Food-Handling Establishments." Perishable foods shall be stored at or below 45°F, or in the frozen state, until heated or cooked immediately before serving.

- ii. Insect and Rodent Control- There shall be no fly or mosquito breeding places, rodent harborages, or un-drained areas on the premises. Necessary measures shall be taken to control flies, mosquitoes, rodents or other vermin.
- iii. Post-Gathering Cleanup-Within one week after the end of the gathering, all areas and immediate surrounding properties shall be cleaned of all litter and solid waste attributable to the mass gathering. Unless otherwise directed by the property owner, all temporary solid waste facilities and signs shall be removed.

- iv. Noise Level at Perimeter- The application shall be accompanied by plans for amplifying equipment, which shall be so located and operated as to limit the noise level at the perimeter of the site to no more than 70 decibels on the A Scale of a sound level meter which meets the specifications of the American National Standards Institute. The application shall include a signed statement certifying that the noise level limit as herein specified shall not be exceeded.
- v. Lighting- The application shall be accompanied by plans for lighting designed to illuminate the site, with such lighting to be adequate to illuminate the site and to be directed away from adjacent properties.
- vi. Signs-Signs shall be posted throughout the area showing the location of toilet facilities, water supply outlets, solid waste receptacles, food stands, first aid facilities and the command post.
- vii. Animals/Pets- Animals shall not be allowed, except for animals for the blind or handicapped. If the event is primarily for animal exhibition, then those animals being exhibited may be allowed in the County's discretion, however a plan shall be submitted, approved and executed for control and clean up of animal waste and disturbance.

4. DENIAL AND APPELLATE PROCESS (Only if a discretionary denial)

A. Appeals- The denial of a permit by the County Manager or his or her designee pursuant to the provisions of this ordinance may be appealed to the Board of County Commissioners by the applicant. Such appeal shall be in writing, filed with the Chairperson of the Board of County Commissioners within five (5) days of the mailing or personal service of the decision of the County Manager or his or her designee and must specify objections to the decision of the County Manager or his or her designee. The Board of Commissioners for Transylvania County shall place this appeal on its agenda for its next scheduled Board meeting so long as it was received by them at least four (4) business days prior to the scheduled meeting. The event sponsor shall make him/her or itself aware of the next meeting and shall confirm receipt of the appeal and the scheduled agenda. If the Board of Commissioners determines that a permit should be issued, then they shall issue a permit. If the Board of Commissioners determines that a permit should not be issued, then they shall not issue the permit and shall notify the applicant in writing specifying the reason for the denial within a reasonable amount of time permitted.

5. ENFORCEMENT MECHANISMS-By presentation of an application, event

sponsor and owner of the mass gathering area agree to the following enforcement mechanisms, as well as to all other enforcement remedies available to the County in law or in equity.

A. INJUNCTION- If any person shall violate or threaten to violate the provisions of this ordinance and any subsequent rules and regulations adopted pursuant thereto and such violation, if continued, or such threatened violation, if committed, is or may be dangerous to the public health, safety, or welfare, or if any person shall hinder or interfere with the County Manager (or any department or city) in the performance of his(her) duties, or representative, and such hindrance or interference is or may be dangerous to the public health, the County Manager may institute an action in the Superior Court of the county in which such violation, threatened violation, hindrance, or interference, irrespective of all other remedies of law, and upon the institution of such an action, the procedure shall be in accordance with G.S. Article 37 of Chapter 1, and all future amendments. Event sponsor shall be responsible for all County costs for this action, including but not limited to attorneys' fees, court costs, expert fees, and all other direct or consequential costs related to the action.

B. CRIMINAL ENFORCEMENT- If there are applicable health, safety or environmental violations, then the County may recommend and enforce criminal prosecution against event sponsor and/or attendees or invitees, as allowed under the laws of the State of North Carolina and the United States of America.

C. ADMINISTRATIVE ENFORCEMENT- The County in its sole discretion, or through its departments and cities, may issue a NOTICE OF VIOLATION & ORDER OF COMPLIANCE, which shall be served to the owner of the property or the event sponsor (note that event sponsor must always be in the mass gathering area during the event) and the owner and/or event sponsor shall immediately cure the violation or the County, in its sole discretion, may close down the event and demand that all activities cease and that all persons be removed from the area. Nothing herein gives the owner or event sponsor any recourse against the County or its departments or cities for any damages, including but not limited to lost profits, for shutting down the event.

6. ALLOCATION OF COSTS-PROCESS-

The County, its departments and any cities who incur direct or indirect costs because of any mass gathering event shall hold the event sponsor responsible for paying such additional costs. The costs shall be determined under traditional cost-accounting methods and the invoice for such costs shall be immediately payable by event sponsor upon receipt. The County, its departments and any cities, shall be entitled to recover interest, penalties, court costs, attorneys' fees and any other reasonable costs for the enforcement of this provision.

7. POST-GATHERING PROCEDURES

- A. Clean-up. The applicant shall be responsible for placing all refuse in appropriate containers, making it ready for removal within twelve hours following the conclusion of the mass gathering.

- B. Post-gathering inspection. Within twelve (12) hours following the conclusion of the mass gathering, the Sherriff of Transylvania County shall cause an inspection to be made at the mass gathering site to determine compliance herein.
- C. Deposit, refund of bond termination. If the event sponsor has complied with all of the provisions herein, including clean up, the County Manager shall authorize return of the clean-up deposit (in an amount to be initially determined by the County Manager) shall be returned within five (5) days from such authorization.
- D. If, upon inspection, the County Manager determines that the event sponsor has failed to comply with the ordinance and specifically with these post-gathering procedures, the County Manager may cause trash and debris at the site to be placed in the appropriate containers, making it ready for removal. The event sponsor shall be responsible for the cost of such clean-up. The County may apply all or a portion of clean up deposit towards the clean-up cost incurred by the County.

8. BOND AND PUBLIC ASSURANCES-

- A. The event sponsor shall carry a public liability insurance policy (which shall name the County as additional insured) in the following amounts, which specifically covers this event: \$ 1,000,000 bodily injury per person; \$5,000,000 bodily injury per occurrence; and \$ 500,000 property damage per occurrence. Proof shall be required upon the approval of the provisional application.
- B. The event sponsor shall provide to County immediately upon approval of the provisional permit the following: a performance bond or some other surety in an amount of \$10 per attendee for the maximum number of attendees to be admitted per application.

9. ADDITIONAL PENALTIES-

In addition to the remedies noted above in Article 5 above, the following penalties may be assessed against any person or entity who willfully holds mass gatherings (or willfully fails to perform any requirement of this ordinance) as defined herein (or who holds an ineligible mass gathering): fines up to \$5,000 and/or imprisonment of up to 60 days. Any person who willfully violates this ordinance shall be guilty of a misdemeanor.