



EMPIRE VILLAGE COUNCIL PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN that the Empire Village Council is holding a public hearing on Tuesday, May 28, 2024, 7:00 pm, at the Empire Township Hall located at 10088 W. Front Street, Empire to receive public comment on an amendment to Mass Gathering Ordinance No. 119, an Ordinance to provide a permitting procedure for mass gatherings to insure the public health, safety and welfare by proper planning for and use of village services and personnel. A Non-profit Fee Waiver Form will also be considered. The regular Village Council meeting will immediately follow. Written comments may be sent to the Village Office, P.O Box 253, 11518 S LaCore Rd., Empire, MI 49630 or deputyclerk@villageofempire.com. A complete copy of the proposed Ordinance and waiver form is available at the Village Office, (231) 326-5466 and on the Village website at: <https://www.leelanau.gov/empirevillage.asp>.

Meeting: May 28, 2024 – Regular

Subject: Mass Gathering Ordinance Review

Author: Sue Palmer

Overview:

The Mass Gathering Ordinance was approved by consensus at our April, 2024 Work Session. We also requested the Fee Waiver be discussed along with a possible form. We agreed that a new Public Hearing was warranted.

Action Requested

Based on input from our public hearing and Council discussion, I am requesting a motion to approve the Mass Gathering Ordinance and the Fee Waiver Form, both attached.

FW: Mass Gathering Ordinance

To Sue Palmer <s.palmer@villageofempire.com>

From: Tim Figura <tfigura@figuralaw.com>
Sent: Friday, July 7, 2023 1:09 PM
To: Sue Palmer <s.palmer@villageofempire.com>
Cc: clerk@villageofempire.com; deputyclerk@villageofempire.com
Subject: Mass Gathering Ordinance

Sue,

You have asked me to review the Mass Gathering Ordinance that was adopted on November 10, 2023. Pursuant to your request, please find the following attached:

1. Mass Gathering Ordinance with recommended changes as detailed below.
2. Non-profit special event waiver application used by the City of South Haven- provided as an example. Something along these lines would provide guidance to the applicant and the zoning administrator on the waiver of application fees, and would prevent the waiver from being used by for-profit entities. If you decide to use this form, I recommend that the your version be modified to require that proof of 501(c)(3) status is attached.

In summary, I recommend a few changes to the Mass Gathering Ordinance as detailed below. A waiver for certain events would be in line with procedures in other communities around the state, but carries a risk that the waiver may be challenged as an invalid expenditure of public funds.

Mass Gathering Ordinance

The amended Ordinance 119 contains a small number of typos on the first page which I have attempted to correct. While these items are minor, item (b) could negatively effect the intended meaning of the sentence.

- a. The end of definition no. 3 extends into item no. 4.
- b. Under section 2.1, third line, "even" should read "event".

Additions and changes:

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- I have added “Section 1- Repealer” to add further clarification to the effectiveness and repeal of the prior ordinance.
- Section 2.1 reads: “A permittee shall not sponsor, maintain, conduct, promote or permit a mass gathering event in the Village without first obtaining a permit...” I recommend changing “permittee” in this sentence back to “person” since a permittee is defined as a person who has already obtained a permit.
- I have added a sentence under “application fee” to allow for 501(c)(3) non-profit organizations to request that the application fee be waived. *This depends whether the Village Council wishes to proceed with a waiver for some events.*
- I have added a definition for “Village Ambassador”
- I recommend splitting out the second paragraph of 3.4.1 Village Ambassador since it does not pertain to Village Ambassadors, but rather to the compatibility of multiple simultaneous events.
- I have added a “severability” clause, and have reorganized the placement and numbering of the savings clause/effective date/adoption paragraphs.

Fee Waiver

In addition to review of the ordinance, you have asked me to consider a fair and equitable fee waiver procedure for community organizations. Michigan municipalities have the power to expend funds only for a public purpose.

The following questions may be helpful in determining whether an expenditure is appropriate:

1. Is the purpose specifically granted by the Michigan Constitution, by statute, or by court decision?
2. Is the expenditure for a public purpose?
3. Is the municipality contracting for services that the municipality is legally authorized to provide?
4. Is the operation or service under the direct control of the municipality?

These criteria can be difficult to meet under these circumstances. For example, the Village would not consider themselves to be in “direct control” of the Asparagus Fest since it is organized and operated by a district entity. The safest route is to require all applicants to pay the fee for events, thereby

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avoiding any appearance of an invalid expenditure.

If you do wish to waive the fee for certain groups, your best bet is to require criteria that will ensure that the event generally benefits the public benefitting a private purpose without receiving commensurate value in return. By requiring 501(c)(3) status and certain other criteria as included on the attached example waiver application, the Village can better ensure that the waiver is being applied towards a public purpose and that the village is receiving commensurate value.

Please let me know if I can assist further,

Tim

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Timothy J. Figura, Esq.

FIGURA LAW

11470 S. Leelanau Hwy, Ste. 105

PO Box 447

Empire, MI 49630

(231) 326-2072 x101

“Working for a better community through law”

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- [mass_gathering_ordinance_7_7_2023.docx](#) (46 KB)
 - [Special Event Fee Waiver Form.pdf](#) (588 KB)

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VILLAGE OF EMPIRE
LEELANAU COUNTY, MICHIGAN

MASS GATHERING ORDINANCE NO. _____

AN ORDINANCE TO PROVIDE A PERMITTING PROCEDURE FOR MASS GATHERINGS TO INSURE THE PUBLIC HEALTH, SAFETY AND WELFARE BY PROPER PLANNING FOR AND USE OF VILLAGE SERVICES AND PERSONNEL.

THE VILLAGE OF EMPIRE ORDAINS:

Section 1. Repealer

Upon the effective date of this Ordinance, the prior Ordinance No. 119, known as the MASS GATHERING ORDINANCE NO. 119 AS AMENDED is, at the same time, repealed.

Section 2. Definitions

The following terms, as used in this Ordinance, are hereby defined to mean:

1. **Permittee** shall mean any person to whom an approval is issued pursuant to this Ordinance.
2. **Person** shall mean any natural person, partnership, corporation, Limited Liability Company, association, organization or other legal entity.
3. **Mass Gathering** shall mean an organized outdoor event of three-hundred fifty (350) people or more held at a single location on either public or private land within the Village; provided, however, a mass gathering shall not include an event sponsored by the Village itself, and/or garage/yard sales held at private property, churches, or civic organizations occurring entirely upon the grounds of said private property, church or organization.
4. **Sketch Plan** shall mean a composite drawing on a Village Map that identifies the specific locations of each required amenity and layout of the specific site which includes all requirements of an application.
5. **Sponsor** shall mean any person who organizes, promotes, conducts or causes to be organized, promoted or conducted, a mass gathering.
6. **Village** shall mean the Village of Empire.
7. **Village Ambassador** shall mean a person engaged by the Village to ensure on-site, the commencement and completion of permitted mass gathering events in conformance with this ordinance.

Section 3. Permit Requirements.

3.1 Necessary of Permit and Notification.

A person shall not sponsor, maintain, conduct, promote or permit a mass gathering event in the

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Village without first obtaining a permit from the Village for such mass gathering. In addition, a person shall not sponsor, maintain, conduct, promote or permit an organized outdoor event of any size in conjunction with or on the same date and at the same location as a mass gathering without first being included in the application of and being included on the approved permit for the mass gathering.

3.2 Application for Permit.

No less than ninety (90) days before the proposed mass gathering, except as provided for in Section 2.6, the sponsor(s) of the mass gathering shall submit in writing an application for a mass gathering permit to the Village's Enforcement Officer on such forms and in such manner as the Village prescribes.

For the application to be considered by the Village of Empire, the application shall be determined by the Village Enforcement Officer to be administratively complete and shall contain:

1. The name(s), address(es) and telephone number(s) of the proposed mass gathering sponsor(s);
2. The date(s), hours, location, and duration of a mass gathering, and the proposed use(s) of any Village-owned property, if any;
3. A description of the kind, character and type of mass gathering proposed;
4. A written statement from the property owner consenting to the use of the property for the proposed mass gathering;
5. An estimate of the maximum number of people expected to attend the proposed mass gathering;
6. A detailed written statement that indicates how the sponsor(s) will provide for the following:
 - a. Police and fire protection;
 - b. Medical facilities and services, including emergency vehicles and equipment;
 - c. Food and water supply facilities;
 - d. Sanitation facilities;
 - e. Vehicle access and parking facilities;
 - f. Cleanup and waste disposal;
 - g. Noise control; and
 - h. Insurance and bonding arrangements.
7. A sketch plan shall be included with the application which shows at a minimum, areas of staging, parking (i.e., public and private), sanitation facilities, emergency corridors and first-aid stations, ingress and egress locations, traffic control, pedestrian crossing areas, waste disposal, food service (if any), and water facilities and resources.
8. The applicant shall attach a letter from all required entities that they have received a copy of the application and that the applicant/application complies with their requirements.
9. The names and mobile phone numbers(s) of the on-site event coordinator representing

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the applicant/application organization.

10. Plan for traffic control, if deemed necessary by the Village Enforcement Officer, including the number, location(s) and traffic control goal(s) for on-site traffic control volunteers provided by the applicant.

11. A mass gathering event that is planned to also occur within additional adjoining jurisdictions, e.g., Empire Township, the applicant shall provide proof of notification of the planned event to those jurisdictions.

3.3 Application Fee.

Each application for a mass gathering permit shall be accompanied by a non-refundable fee in an amount established from time to time by the Village Council as established in the Village Fee Schedule. Applicants who are non-profit entities with 501(c)(3) tax exempt status may request waiver of the event fee by submitting a Non-Profit Mass Gathering Fee Waiver Application along with the required Mass Gathering Application.

3.4 Action on Application.

After receiving an application for a mass gathering permit, the Village Enforcement Officer or his/her appointee, shall review the information contained in the application, and if necessary, investigate and determine the impact of the proposed mass gathering, using the following criteria:

1. Suitability of the site for the proposed mass gathering,
2. Length of the mass gathering, the number of people anticipated to attend,
3. Conflict with other uses of the site,
4. Information received from the County Sheriff, County Emergency Medical Resources and Township Fire Department relating to increased demands,
5. Plans to provide adequate food, water facilities and sanitation facilities,
6. Disposal of solid waste and garbage,
7. Impact on traffic patterns, vehicle parking to and within the site, and applicant's ability to provide controls, and
8. Impact on pedestrian routes to and within the site and the applicant's ability to provide controls.

Prior to granting the permit, the Village Enforcement Officer may at their discretion, seek guidance from the Village Council with regard to the terms and conditions necessary for the issuance of a permit.

If the proposed mass gathering proposes to use Village-owned property, the Village Council must review and approve the proposed use(s) of Village-owned property at the next regular Village Council meeting and before the Village Enforcement Officer can make a final decision on any administratively complete application.

Within thirty (30) days after receiving an application for a mass gathering permit, the Village Enforcement Officer shall either:

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1. Approve or conditionally approve the application and issue the mass gathering permit;
2. Deny the mass gathering permit for failure to comply with this Ordinance; or
3. Deny for lack of the provision of a complete application by the Applicant.

If the application is denied, the Village Clerk shall send written notice of the denial, including the reasons for the denial to the sponsor(s) by certified mail within five (5) days of the denial decision.

The Village Enforcement Officer may attach any conditions to the issuance of such a permit which, at his or her sole discretion, deems necessary to protect the public health, safety and welfare.

3.4.1 Village Ambassador.

The Village Council may engage and compensate Village Ambassador(s) to ensure on-site, the commencement and completion of permitted mass gathering events in conformance with this ordinance. The Village Enforcement Officer shall provide the permittee with the name and contact information for an event assigned Village Ambassador(s).

3.4.2 Overlapping Mass Gathering Events

If the proposed mass gathering event is planned that would overlap with another mass gathering event within the Village, the permittee of the second mass gathering may be asked to demonstrate how the proposed mass gathering event will be compatible with the first permitted mass gathering event(s). The review of such permit applications will be on a first-come, first-served basis. The Village Enforcement Officer shall determine mass gathering events compatibility for simultaneous events by the criteria outlined in Section 2.2 of this Ordinance.

3.5 Requirement for Applicant's Reimbursement to the Village.

1. Additional Cost Determination

After the event, the Village Enforcement Officer will, in consultation with the Village DPW and Clerk, review and determine if additional costs - in services or personnel - were incurred by the Village due to the event. The permittee shall be responsible for reimbursing the Village for those additional costs. Since most events are held on weekends, overtime rates will apply.

Those additional costs shall not include any Village regularly scheduled activities or personnel schedules that would normally be scheduled on the specific dates(s).

2. Reimbursement Requirement for Village Employees

Determination for Village staff hours shall be based on the Village's actual cost to have the lowest paid departmental employee(s) in ascending order for the specific task on duty during the event. Reimbursement shall be based on all costs associated to the specific employee including, but not limited to, regular or overtime pay, fringe benefit reimbursement and insurances.

3. Reimbursement Requirement for Village Equipment or Supplies

Reimbursement to the Village for equipment, vehicles or supplies and services such as refuse

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disposal cost and vehicles shall be based on actual cost of equipment or services, or vehicle cost based on the State of Michigan's Schedule of Equipment Cost, as amended, and as updated by the State of Michigan Treasury at the time of the event.

4. Reimbursement Payment to the Village

All cost reimbursements due to the Village must be paid in full within thirty (30) days after the final date of the event. The Village shall use any legal means necessary to collect any unpaid cost reimbursements. Non-payment of reimbursement cost may jeopardize any future events scheduled for the permittee and can be grounds for denial of future applications.

The Village Enforcement Officer may require the applicant to post a two thousand-dollar (\$2,000.00) performance bond or cash security deposit as a condition of granting the permit if, in said officer's sole discretion, such performance bond or cash security deposit is necessary to ensure the Village will be reimbursed for its costs as provided for in this Ordinance.

3.6 Exemption from Other Ordinances.

It is the express intent of the Village that all mass gatherings held within the Village shall be governed by this Ordinance and shall therefore be exempt from the provisions of similar Empire Township or Leelanau County ordinances not specifically adopted by the Village Council. The Village Enforcement Officer may accept or reject any review, decision, determination or recommendation by Leelanau County or its officers for any event held or to be held within the Village limits.

Section 4. Village Enforcement Officer.

Unless and until a different person is assigned the authority and duties of the Village Enforcement Officer under this Ordinance, all of said authority and duties shall be performed by the Village's Zoning Administrator who shall serve as the Village Enforcement Officer during such time.

Section 5. Appeals Process.

An aggrieved applicant may appeal any decision of the Village Enforcement Officer to the Village Council. All such appeals shall be filed and heard prior to the event's occurrence. No appeal of the costs imposed by this Ordinance shall be considered for any event after the event's occurrence. The Village Council's decision shall be final for the purposes of this Ordinance.

Section 6. Violations.

6.1 Municipal Civil Infractions.

Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction and shall be subject to the penalties and sanctions set forth in the Municipal Civil Infractions Ordinance of the Village of Empire as such ordinance may be amended from time to time. Each day this Ordinance is violated, it shall be considered as a separate violation.

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6.2 Enforcement Officials.

The officers of the Leelanau County Sheriff's Department and the Village Enforcement Officer provided for in this Ordinance are hereby designated as the authorized Village officials to issue municipal civil infraction citations directing alleged violations of this Ordinance to appear in court.

6.3 Nuisance *Per Se*.

A violation of this Ordinance is hereby declared to be a *nuisance per se* and is declared to be offensive to the public health, safety and welfare.

6.4 Civil Remedies.

In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance *per se* or any other violation of this Ordinance.

Section 7. Severability

The several sections of this Ordinance shall be deemed severable, and should any section, clause, or provision thereof be declared unconstitutional or contrary to the law of the State of Michigan, and therefore voided by any court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part or section so declared to be unconstitutional or invalid.

Section 8. Savings Clause

All proceedings pending and rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

Section 9. Effective Adoption and Date

9.1 Effective Date

The provisions of this Ordinance are ordered to take effect thirty (30) days after publication (as the full text or as a summary thereof) in a newspaper of general circulation in the Village of Empire.

9.2 Adoption

This Ordinance was duly adopted by the Village of Empire Council at its regular meeting called and held on the _____.

Section 10. Publication

The Village Clerk shall cause this Ordinance or summary of this Ordinance to be published in a newspaper of general circulation within Village of Empire within thirty (30) days after adoption.

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City of South Haven
Department of Public Works/Parks Department

NON-PROFIT SPECIAL EVENT FEE WAIVER APPLICATION

1199 8th Avenue • South Haven, MI 49090 • 269.637.0737 • Fax: 269.637.4778

This form must be submitted with the application for the corresponding event, following the deadlines for application submission. Failure to include this form at the time of application submission will result in applicable event fees being charged to the event coordinator.

Requested Event Date: 1st choice **: _____

2nd Choice ** (Required): _____

****Date choice is not guaranteed until final calendar has been determined by City staff.**

ORGANIZATION'S INFORMATION

EVENT TITLE: _____

Applicant Name: _____

Organization Name: _____

Non-Profit I.D. or Tax Exempt #: _____

Address: _____

_____ City _____ State _____ Zip

Phone: () _____ Cell: () _____

Email Address: _____ Fax: () _____

EVENT INFORMATION

Event Type (please select all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Race (run, walk, bike, etc.) | <input type="checkbox"/> Tournament Type: _____ |
| <input type="checkbox"/> Parade | <input type="checkbox"/> Pass-Through |
| <input type="checkbox"/> Street Fair/Festival | <input type="checkbox"/> Fundraiser Benefitting: _____ |
| <input type="checkbox"/> Concert | <input type="checkbox"/> Other _____ |

Event Location: _____

Why are you requesting to waive the Special Event Fee?

Please identify the hardship incurred *(please attach additional pages, if necessary)*:

Please identify how your organization benefits the City of South Haven as outlined in the criteria below.
Please be specific *(attach additional pages, if necessary)*:

CRITERIA CONSIDERED

The City will consider the following when reviewing a special event fee waiver request:

- Raises funds to supplement City budgeted services.
- Raises funds for programs normally funded by the City.
- Raises funds for Non-Profit groups, which have contributed substantially to the community.
- Nationally or State affiliated program which provides programs for local youth.
- Raises funds for elderly citizens or youth organizations.

Event Representative (signature)

Date

Special Event Coordinator

Date