

**COUNTY OF YORK
COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO. 2002-02**

ORDINANCE AMENDING CHAPTER 85 OF THE YORK COUNTY CODE
PROVIDING FOR RESTRICTED USE OF THE COUNTY'S PROPERTY,
INCLUDING ALL PUBLIC BUILDINGS AND PARKS, BY INDIVIDUALS OR
GROUPS WHOSE ASSEMBLY CREATES A CLEAR AND PRESENT DANGER
TO PUBLIC SAFETY AND WELFARE AND PROHIBITING THE WEARING OF MASKS
OR ITEMS TO AVOID IDENTIFICATION WHILE IN OR AROUND COUNTY PROPERTY

WHEREAS, on September 11, 2001, the United States was attacked by terrorists who have declared war upon the United States; and

WHEREAS, the Federal Government has acknowledged and declared war on terrorism; and

WHEREAS, the Federal Government has declared a state of increased awareness of varying degrees to contend with the threat of expected future terrorist attacks; and

WHEREAS, on January 12, 2002, as a result of an exercise of free speech, White Supremacists and Anarchists clashed with each other in the City of York, resulting in the arrest of 25 people, destruction of property, injuries, and disturbance of the public peace, which required the utilization of police and emergency personnel; and

WHEREAS, it is recognized that free speech is a fundamental right in our democracy that is guaranteed by the United States Constitution; and

WHEREAS, the exercise of free speech has recognized limits and does not include yelling "fire" in a crowded theater, "fighting words," "threats of violence," or advocacy of imminent lawless action; and

WHEREAS, the assembly of certain individuals and groups whose expression of speech is designed or has been proven to provoke destruction of private and public property, cause injury and death to innocent citizens in this time of war, and may constitute a clear and present danger to the public safety and welfare; and

WHEREAS, it is in the public interest to prevent public gatherings that present a clear and present danger to public safety and the welfare of the residents of York County; and

WHEREAS, it is recognized that terrorism and terrorist attacks are foreseeable possibilities for all parts of the United States, including the County of York; and

WHEREAS, the prompt deployment of the County's full complement of police, fire, and emergency personnel, is necessary to protect lives and property in the event of a terrorist attack; and

WHEREAS, it is in the public interest to avoid foreseeable public events that are likely to result in rioting and incidents of conflict that will divert police, fire, and emergency personnel from being available to respond to terrorist attacks.

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED, as follows:

ARTICLE I.

**SECTION 85.24 – USE OF COUNTY PROPERTY
DURING TIMES OF POTENTIAL TERRORIST ATTACKS**

- A. RESTRICTED USE BY INDIVIDUALS OR GROUPS WHO ARE LIKELY TO CREATE CLEAR AND PRESENT DANGER TO THE PUBLIC SAFETY AND WELFARE.

During an alert of yellow or higher issued pursuant to the Homeland Advisory System by the Director of Homeland Security, and other designated times, all public buildings and other County property are closed for use by any person, group or organization whose assembly after investigation is found to create a clear and present danger to public safety and welfare.

- B. Procedure to request use of County property.

Any person who desires to congregate, assemble or use county property shall apply for permission to do so following established procedures which shall be supplemented and amended hereby. If the request is to use part or all of County property for which no procedure is established, a letter making the request, together with a check for \$100.00, shall be mailed to the County Chief Clerk/Administrator, One West Marketway, 4th Floor, York, Pennsylvania 17401. The letter shall designate the date, time, place, purpose and number of persons who desire to use the requested County property. Such request shall be made at least Sixty (60) days prior to the desired time of use. If the applicant is affiliated

with any organization or identifiable group, that affiliation shall be disclosed in the request for use.

SUBJECT, NEVERTHELESS, that any person who visits County property for official purposes to obtain County services, or for sightseeing or recreational use, or any use that does not involve assembly of more than Twenty-five (25) persons or require reserved use of specific County property, and whose use does not and cannot be anticipated to create a clear and present danger to public safety and welfare, shall not be required to apply for permission to enter such County property as required hereunder.

C. REVIEW GUIDELINES

In making the determination of whether an applicant's use shall create a clear and present danger to public safety and welfare, the following matters shall, whenever practical be considered:

1. The number of persons reasonably expected to attend the assembly. (If less than 25, there shall be a presumption that the group does not present a clear and present danger.)
2. What information is available concerning the applicant or his or her affiliated organization shall be obtained from the Office of Homeland Security, the Pennsylvania Police Intelligence Officer, and any other available sources of information.
3. Past history, with particular emphasis on whether past assemblies or meetings resulted in any damage, death or injury, arrest, prosecutions, and whether any damage or losses caused by the assemblies were met with appropriate reparation and compensation.
4. Whether fire arms or other weapons are likely to be possessed by persons attending the assembly.
5. Whether alcoholic beverages or drugs have been used by assemblies in the past or are likely to be used by persons attending the requested assembly.
6. Criminal history of the principal applicant or speakers to be present.
7. The meeting involves or is likely to involve or facilitate ethnic intimidation or the encouragement of discrimination or other unlawful conduct.

8. The meeting, because of known factors of volatility, may reasonably be expected to create incitement to violence or develop into a riot. Factors of volatility shall include:
 - a. The reasonable expectation of provocative messages of challenge to fighting or combat;
 - b. The reasonable expectation of provocative messages of hatred directed toward a class or group of persons reasonably expected to be near or at the assembly; and
 - c. A past history where a breach of the peace or rioting occurred as a result of the assembly, including the past history of similar organizations.
 - d. The assembly has been promoted as a call to arms or is expected to present unlawful "fighting words," "threats of violence," or advocacy of imminent lawless action.
9. Whether the assembly will obstruct highways or other public thoroughfares.
10. Whether the applicant is financially responsible and able to repair any damage resulting from the assembly.
11. Whether disruption of the assembly is likely requiring arrests under 18 Pa.C.S.A. §5508.
12. Whether the assembly is likely to result in disorderly conduct in violation of 18 Pa.C.S.A. §5503.
13. The truthfulness of all information supplied by the applicant and whether in the past, any untruthful or fraudulent information was included in an application requesting to use public facilities.
14. Any other relevant and material fact concerning the applicant or the anticipated assembly.
15. Recommendations concerning the request for approval from the County Sheriff, chief of police from the municipality where the event is thought to be scheduled, and the District Attorney for the County in which the event is to be scheduled. A recommendation from the Attorney General of Pennsylvania shall be sought if the need to request assistance from Pennsylvania State Police is anticipated.
16. The totality of all the expected circumstances, including but not limited to the weather, conveniences for public use, the need for crowd management and control, and the public and private resources available for emergency response.

D. STANDARDS OF PROOF

The County Chief Clerk/Administrator and all persons, including the Court on appeal who consider whether the denial of permission to use County property is justified, shall not be bound by the formal rules of evidence. All relevant and material evidence shall be considered.

If confidential evidence that involves matter of law enforcement security or national security is used, a separate sealed file shall be maintained but be subject to inspection by the Court of Common Pleas in appropriate cases.

In times of yellow alert or higher, the County Chief Clerk/Administrator shall deny the request, if the evidence establishes the risk of permission to use public property is likely to create a clear and present danger to the public safety and welfare.

In times of blue or green alert, the County Chief Clerk/Administrator shall deny permission if the evidence establishes that the use of such property is more likely than not to present a clear and present danger to public safety and welfare.

In peacetime, the County Chief Clerk/Administrator shall grant the permission to use public property unless the evidence shall prove beyond a reasonable doubt that the use of County property presents a clear and present danger to public safety and welfare.

"Clear and present danger to public safety and welfare" requires proof that:

- (1) The requested use of County property will be reasonably expected to require the utilization of substantial numbers of police, fire and emergency personnel so that an effective response for a second and concurrent need for an emergency response such as a terrorist attack will be substantially impaired; and
- (2) Because of the numbers of expected attendees or unique circumstances such as an assembly of "armed" attendees or other matters discovered by the review, may be reasonably expected to generate an incident wherein the available police and security personnel will be unable to prevent the death of or substantial injury to persons and damage to public or private property.
- (3) Clear and present danger to public safety and welfare is not to be used as a means of suppressing a peaceable assembly when public disorder is not threatened or there is a "mere probability of a breach of the peace." There must be evidence of a clear and present

danger to public safety and welfare that rises above inconvenience, annoyance or unrest.

- (4) Lawful speech or assembly and use of public property that is open for use to other persons or groups, shall not be restricted, and permission denied when the actual threat to "public safety" results not from the lawful speech and/or peaceable assembly of applicants, but rather to the expected reaction of some other person, group or organization that disagrees with the exercise of the applicant's lawful expressions of free speech.

E. WEARING MASKS OR OTHERWISE OBSCURING OR EVADING IDENTIFICATION

It shall be unlawful for any person on County property or within three hundred (300) feet thereof in anticipation of or after visiting County property, to wear masks or to otherwise, obscure their face with bandanas, hats or other item for the purpose of evading identification and possible prosecution for violation of any law, rule or regulation.

F. OFFENSES

1. It shall be unlawful to use any public building or property for meetings, assembly or any use not excluded hereunder, without first requesting and receiving permission therefor.
2. Any person or group of persons who applies for permission and are declined permission to use public property, but nonetheless, in violation of that denial, enter upon public property to use the same shall be deemed defiant trespassers within the meaning of the Pennsylvania Crimes Code and may be separately prosecuted for that crime.
3. Any person who has been requested to leave a public property by a law enforcement officer or other authorized agent of the County Commissioners and who shall refuse to do so, shall be deemed a "defiant trespasser" and be subject to prosecution therefor, and also be in violation of this Ordinance and subject to the penalties provided hereafter.
4. It shall be unlawful to violate any provision of this ordinance.

G. RIGHTS OF APPEAL

Any person who is aggrieved by the decision of the County Chief Clerk/Administrator shall have the right within Ten (10) days to appeal the decision to the Court of Common Pleas. The appeal shall be filed within Ten (10) days of the notice of denial of permission to use County property and shall delineate the reasons for the appeal. The Court shall endeavor to schedule a hearing within Ten (10) days of the date of the appeal. The Court, shall, after hearing, deny the appeal, grant the appeal or grant the appeal with conditions appropriate to the circumstances.

H. TIME LIMITS

Any person requesting the use of County property shall file the request at least Sixty (60) days prior to the time the property is sought to be used. The County Chief Clerk/Administrator, or designee, shall answer the request for permission to use County property within Thirty (30) days of the receipt of the application. If the request is denied, the denial shall be in writing and shall designate the reasons for denial. The denial shall be sent by ordinary mail to the address set forth in the application for use, and by FAX or E-mail, if noted on the application.

I. PENALTIES

Any person who shall violate this Ordinance shall be guilty of a summary offense and shall upon conviction thereof, be sentenced to pay a fine of not less than Five Hundred (\$500.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars for the use of the County, to pay the costs of prosecution and be imprisoned for not more than ten (10) days, or both.

J. SEVERABILITY

The provisions of this Ordinance shall be considered severable, and if any clause, sentence, subsection or section shall be adjudged by any Court of Common Jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair, or invalidate the remainder of the Ordinance, but shall be confined in its operation and application to the clause, sentence, subsection or part thereof rendered invalid or unconstitutional.

K. EFFECTIVE DATE

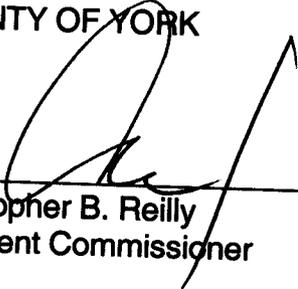
All provisions of this Ordinance shall take effect immediately.

Ordained and enacted this 10th day of April, 2002.

ATTEST:

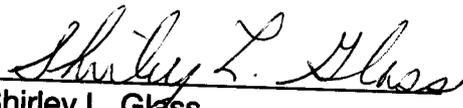
COUNTY OF YORK


Charles R. Noll
Administrator/Chief Clerk


Christopher B. Reilly
President Commissioner

(SEAL)


James F. Donahue


Shirley L. Glass

Ordinance 2002-02 was ordained, enacted, and adopted this 10th day of April, 2002 at a regularly scheduled meeting of the Board of Commissioners of the County of York duly advertised and assembled upon motion of James F. Donahue and seconded by Shirley L. Glass and passed by a vote of 3 yes and 0 no.

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WHEREAS, it is in the public interest to prevent public gatherings that present a clear and present danger to public safety and the welfare of the residents of York County; and

WHEREAS, it is recognized that terrorism and terrorist attacks are foreseeable possibilities for all parts of the United States, including the County of York; and

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SECTION 85.24 – USE OF COUNTY PROPERTY
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 - c. A past history where a breach of the peace or rioting occurred as a result of the assembly, including the past history of similar organizations.
 - d. The assembly has been ^{promoted} advertised as a call to arms or is expected to present unlawful "fighting words," "threats of violence," or advocacy of imminent lawless action.
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 15. Recommendations concerning the request for approval from the County Sheriff, chiefs of police from the municipality where the event is thought to be scheduled, and the District Attorney for the County in which the event is to be scheduled. A recommendation from the Attorney General of Pennsylvania shall be sought if the need to request assistance from Pennsylvania State Police is anticipated.
 16. The totality of all the expected circumstances, including but not limited to the weather, conveniences for public use, the need for crowd management and control, and the public and private resources available for emergency response.

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In times of blue or green alert, the County Chief Clerk/aAdministrator shall deny permission if the evidence establisheds that the use of such property is more likely than not to present a clear and present danger to public safety and welfare.

In peacetime, the County Chief Clerk/aAdministrator shall grant the permission to use public property unless the evidence shall prove beyond a reasonable doubt that the use of County property presents a clear and present danger to public safety and welfare.

"Clear and present danger to public safety and welfare" requires proof that: ~~persons or property may suffer injury or damage and that police and emergency personnel may be required to address violations of the law, rescue or treat injured parties, fight fires, or be required to restore law and order to the area of the assembly.~~

- (1) The requested use of County property will be reasonably expected to require the utilization of substantial numbers of police, fire and emergency personnel so that an effective response for a second and concurrent need for an emergency response such as a terrorist attack will be substantially impaired; and
- (2) Because of the numbers of expected attendees or unique circumstances such as an assembly of "armed" attendees or other matters discovered by the review, may be reasonably expected to generate an incident wherein the available police and security personnel will be unable to prevent the death of or substantial injury to persons and damage to public or private property.
- (3) Clear and present danger to public safety and welfare is not to be used as a means of suppressing a peaceable assembly when public

disorder is not threatened or there is a "mere probability of a breach of the peace." There must be evidence of a clear and present danger to public safety and welfare that rises above inconvenience, annoyance or unrest.

- (4) Lawful speech or assembly and use of public property that is open for use to other persons or groups, shall not be restricted, and permission denied when the actual threat to "public safety" results not from the lawful speech and/or peaceable assembly of applicants, but rather to the expected reaction of some other person, group or organization that disagrees with the exercise of the applicant's lawful expressions of free speech.

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It shall be unlawful for any person on County property or ~~in the vicinity~~ within three hundred (300) feet thereof in anticipation of or after visiting County property, to wear masks or to otherwise, obscure their face with bandanas, hats or other item for the purpose of evading identification and possible prosecution for violation of any law, rule or regulation.

F. OFFENSES

1. It shall be unlawful to use any public building or property for meetings, assembly or any use not excluded hereunder, without first requesting and receiving permission therefor.
2. Any person or group of persons who applies for permission and are declined permission to use public property, but nonetheless, in violation of that denial, enter upon public property to use the same shall be deemed defiant trespassers within the meaning of the Pennsylvania Crimes Code and may be separately prosecuted for that crime.
3. Any person who has been requested to leave a public property when ~~requested to do so~~ by a law enforcement officer or other authorized agent of the County Commissioners and who shall refuse to do so, shall be deemed a "defiant trespasser" and be subject to prosecution therefor, and also be in violation of this Ordinance and subject to the penalties provided hereafter.
4. It shall be unlawful to violate any provision of this ordinance.

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Any person who is aggrieved by the decision of the County Chief Clerk/Administrator shall have the right within Ten (10) days to appeal the decision to the Court of Common Pleas. The appeal shall be filed within Ten (10) days of the notice of denial of permission to use County property and shall delineate the reasons for the appeal. The Court shall endeavor to schedule a hearing within Ten (10) days of the date of the appeal. The Court, shall, after hearing, deny the appeal, grant the appeal or grant the appeal with conditions appropriate to the circumstances.

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I. PENALTIES

Any person who shall violate this Ordinance shall be guilty of a summary offense and shall upon conviction thereof, be sentenced to pay a fine of not less than Five Hundred (\$500.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars for the use of the County, to pay the costs of prosecution and be imprisoned for not more than ten (10) days, or both.

J. SEVERABILITY

The provisions of this Ordinance shall be considered severable, and if any clause, sentence, subsection or section shall be adjudged by any Court of Common Jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair, or invalidate the remainder of the Ordinance, but shall be confined in its operation and application to the clause, sentence, subsection or part thereof rendered invalid or unconstitutional.

K. EFFECTIVE DATE

All provisions of this Ordinance shall take effect immediately.