



INTRODUCED BY: **Renee Nelson**

DATE: **December 6, 2016**

AN ORDINANCE

Amending Article 741 "Park Conduct" of the Codified Ordinances of the City of York, Pennsylvania, to update language to make it consistent with current laws and regulations.

WHEREAS, Article 741 "Park Conduct" of the York City Codified Ordinances was established for the purpose of regulating conduct within public parks in the City of York, and to provide for fees and penalties for violations thereto; and

WHEREAS, after review of the ordinance by city staff, recommendations were made to update language to make it consistent with current laws and regulations;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of York, Pennsylvania, that Article 741 "Park Conduct" is hereby amended as set forth per the attached, which is herein incorporated by reference.

PASSED FINALLY:

BY THE FOLLOWING VOTE:

YEAS: _____, _____, _____, _____, _____

NAYS: _____

Michael Helfrich, President of Council

ATTEST:

Dianna L. Thompson-Mitchell, City Clerk

Presented to the Mayor for approval this _____ day of _____.

Approved: _____
Mayor Date

Vetoed: _____
Mayor Date

ARTICLE 741
Park Conduct

741.01	Council control of monuments.	741.04	Fishing in Kiwanis Lake.
741.02	Prohibited acts.	741.05	Permitted advertising.
741.03	Public meetings.	741.99	Penalty.

CROSS REFERENCES

Bicycles prohibited in parks - see TRAF. 533.09
Littering in bodies of water - see GEN. OFF. 729.02

741.01 COUNCIL CONTROL OF MONUMENTS.

(a) Council shall have power to grant permission to any church, school, fire, company, secret order or society of charity, to erect or build a monument or statue upon public parks.

(b) All permits to build or erect any monument, memorial or statue in public parks shall be issued by the City Engineer who, with Council shall have full charge and control of the location and construction of all monuments, memorials or statues to be erected in such public parks. (Ord. 22-2008. Passed 6-3-08.)

741.02 PROHIBITED ACTS.

No person shall do or assist in doing any of the following acts in any of the public parks of the City:

- (a) Perform any disorderly or immoral act.
- (b) Throw any stones or missiles.
- (c) Gamble or play any game of chance.
- (d) Practice fortunetelling.
- (e) Solicit a contribution or subscription of money or other valuable thing.
- (f) Cast or deposit any rubbish, refuse, ashes, garbage, stones or sand, except in a container provided by the City for such purpose.
- (g) Ride or drive any motorized vehicle except on highways.
- (h) Sell or offer or display for sale any goods, wares, merchandise, refreshments, or any other thing.
- (i) Remove any seats or benches from their resting places.
- (j) Willfully deface, injure, break, cut or destroy any building, seats, benches, trees, plants, shrubbery, grass, flowers, monuments, fountains, or other property pertaining to such parks, or dig any hole or cut any sod therein.
- (k) Post any sign, banner, advertisement or circular, except as provided in Section 741.05.

- (l) Play any game or engage in any sport or contest except at places designated and set aside by the City as a public playground for such purposes.
- (m) Obstruct any roadway or path.
- (n) Ride or drive any horse or other animal in any park except on the highways thereof.
- (o) Bring any dog into a public park unless such dog is on a leash.
- (p) Be on park premises before 6:00 a.m. or after 10:00 p.m. unless participating in activities sponsored by the City and/or the Advisory Council on Recreation and Parks.
- (q) Tobacco Use. No person shall smoke at any City facility designated as a park, playground or pool by Exhibit A attached to original Ordinance 22-2008 and incorporated herein by reference. Exemptions are listed in subsection (q)(3) hereof. All City facilities in which smoking is prohibited shall be posted to prohibit smoking. For the purposes of this subsection, "smoking" means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device used for tobacco. "Tobacco use" means the smoking of tobacco products in any form. Failure to comply with this subsection shall result in the following penalty:
 - (1) A warning and a requirement to immediately cease tobacco use in the City park for the first offense.
 - (2) A twenty-five dollar (\$25.00) fine and requirement to immediately cease tobacco use in the City park for a second or subsequent offense.
 - (3) Exemptions: Continental Square shall be exempt from the smoking prohibition. (Res. 99-2008. Passed 6-3-08.)

741.03 PUBLIC MEETINGS.

- (a) Designation of Park Facilities.
 - (1) Proposed designation. The Recreation and Parks Director shall classify all City park property under a uniform system of classification and designate for each such classification the use or uses which, in his/her judgment should be permitted therein. Categories of classifications which the Recreation and Parks Director shall designate may include, but are not limited to, parks, playgrounds, playlots, and leased facilities. The Recreation and Parks Director shall classify all City park property under the following classification system:
 - A. "Public Forums" shall be defined as areas open to any legal public assembly pursuant to the limitations set forth herein.
 - B. "Limited Use Areas" shall be defined as those buildings, improvements, and other areas for which a specific use or occupancy is intended. Such areas shall include, but not be limited to, picnic and pavilion areas, playgrounds, basketball and tennis courts, etc.
 - C. "Areas or Facilities Not Designated for Public Assembly" shall be defined as those buildings, improvements and other areas not open to the general public. Such areas shall include, but not be limited to, maintenance, storage, employee and operational areas.

- D. "Special Facilities" shall be defined as those buildings, improvements and other areas designed or designated for a specific use and occupancy. Such facilities shall include but not be limited to the Farquar Park Band Stand, stages, boat launch, miniature golf course and batting cages. Use of these facilities may involve a rental, admission, team or other related fee. The Recreation and Parks Director shall then record the designations for each park and shall transmit the same promptly to City Council, which shall then approve, amend or reject the designations. Thereafter, the Recreation and Parks Director may, from time to time, as he/she shall deem necessary and proper, amend or revise his/her designations and shall promptly transmit in writing the amendments or revisions to City Council, which shall approve, amend or reject the same. All such designations, and the Recreation and Parks Director's amendments and revisions thereof, shall be in full force and effect from the time that the same are expressly approved as such or as amended by City Council.
- (2) Public review of proposed designation. Simultaneous with the transmission to City Council of the plats or maps required by this article, or of any written amendments or revisions thereof, the Recreation and Parks Director shall file a duplicate copy of the same with the City Clerk, which duplicate copy shall be available for public inspection in the Office of the City Clerk during normal business hours.

(b) Rules and Regulations. The Recreation and Parks Director may, from time to time, establish reasonable rules and regulations, for the use of each facility in the Park System and for obtaining permits pursuant to this chapter. Such rules and regulations shall be based on a due regard for the purpose for which the facility is established, the safety of those using the facility, of City employees and of the public, the safety and maintenance of Park property, the need for and the availability of supervisory personnel, and the maximum number of people who can safely use the facility at one time. Subject to the foregoing, and except as hereinafter provided, all Park facilities may be used by members of the general public, without permit, for recreational and athletic purposes not inconsistent with the nature of the facility and the safety of the public and of Park property.

(c) Permit Requirements.

- (1) General. No person shall, without a permit:
- A. Conduct a public assembly, parade, picnic, or other event involving more than twenty-five individuals;
 - B. (Editor's Note: This subsection B is intentionally left blank by Ordinance 33-2003, passed September 9, 2003);
 - C. Conduct an exhibit, music or dramatic performance, fair, circus, concert, play, radio or television broadcast, other than a news transmission involving more than twenty-five individuals;
 - D. Exhibit or display any motion picture, television program, light or laser light display, or similar event involving more than twenty-five individuals;

- E. Operate a vehicle, except upon a publicly dedicated street, alley, watercourse or other thoroughfare which may abut or traverse a park;
 - F. Create or emit any amplified sound, except from a radio, recorder or other device possessed and used by an individual for his/her own enjoyment and operated in such a manner so as not to interfere with the use and enjoyment by another person;
 - G. Station or erect any building, tent, canopy, stand, bandstand, stage, tower, scaffold, sound stage, platform, rostrum or other structure;
 - H. Station or use any electrical or electronic device or equipment that would require outdoor auxiliary power;
 - I. Sell or offer for sale any goods or services;
 - J. (Editor's Note: This subsection J. is intentionally left blank by Ordinance 33-2003, passed September 9, 2003)
 - K. Bring, land or cause to ascend or descend or alight within the Park, any airplane, helicopter, flying machine, balloon, parachute or other apparatus for aviation (a kite shall not be considered an "apparatus for aviation" for purposes of this subsection);
 - L. Conduct any sporting event involving more than twenty-five individuals;
 - M. Ride any horse on any driveway, roadway, path or trail; or
 - N. Bring onto property a tame, non-domestic supervised and controlled or restrained animal for limited non-commercial or promotional purposes.
- (2) Permits for activities involving more than 100 individuals. No activity involving more than one hundred individuals shall be held within two thousand five hundred feet nor within two hours of any other activity involving more than one hundred individuals.

(d) Application for Permits.

(1) Filing written application.

- A. Special event permit. Any person seeking the issuance of a permit shall apply for a permit by filing a written application for permit on a form and within such time as shall be prescribed by the Recreation and Parks Director. Applications involving any of the following activities shall be filed with the Recreation and Parks Director or his/her designee.
 1. An event involving more than twenty-five individuals;
 2. The sale or offering for sale any good or service;
 3. The sale or service of alcohol on Park property;
 4. Advertising or commercial activities;
 5. Activities involving more than one park;
 6. A religious or political event involving more than twenty-five individuals;

7. Creation or emission of any amplified sound, except from a radio, recorder or other device possessed and used by an individual for his/her own enjoyment and operated in such a manner so as not to interfere with the use and enjoyment by another person;
 8. Stationing or erecting any building, stand, bandstand, stage, tower, tent, canopy, scaffold, sound stage, platform, rostrum or other structure;
 9. Use of any electrical or electronic device or equipment requiring outdoor auxiliary power;
 10. Bring land or cause to ascend or descend or alight within the Park, any airplane, helicopter, flying machine, balloon, parachute or other apparatus for aviation (a kite shall not be considered an "apparatus for aviation" for purposes of this subsection);
 11. Riding of a horse or horses; or
 12. Use of mechanical rides.
- B. Spontaneous events.
- (2) Media/motion picture/commercial photography. Any person seeking the issuance of a permit for filming of a media broadcast (other than a news transmission), motion picture, or still commercial photography shall file a written application for permits with the Recreation and Parks Director or his/her designee on a form and within such time as shall be prescribed by the Recreation and Parks Director.
 - (3) Recreational permits. Any person seeking to reserve Park facilities for any event involving less than twenty-five people and not including the items covered in paragraph (d)(1)A., above, shall file a written application with the Recreation and Parks Bureau on a form and within such time as shall be prescribed by the Recreation and Parks Director.
 - (4) Special facilities. Any person seeking the issuance of a permit for use of Park property designated as a special facility shall file a written application for permit with the Recreation and Parks Director or his/her designee on a form and within such time as shall be prescribed by the Recreation and Parks Director.
- A. Any commercial restaurant seeking to use Park property, designated as special facility, for commercial gain, shall pay a Commercial fee for each day of operation. The Commercial fee shall be set by the Recreation and Parks Director and approved by City Council.**
- (5) Application fee. For any activity described in Section 741.03(d)(1), no application for permit shall be considered unless the applicant shall have paid at the time for filing an application for permit the required application fee in the amount in accordance with the schedule of fees set by the Recreation and Parks Director and approved by the City Council. The application fee is subject to the waiver provisions of Section 741.03(f) (1)-(3).
 - (6) Indemnification agreement for events where the applicant expects attendance of more than 100 people. No application for permit shall be granted unless the applicant shall have executed an agreement with the City, on a form to be prescribed by the Recreation and Parks Director, in which the applicant shall promise and covenant to cleaning up and restoring the park upon conclusion of the event or activity; and to indemnify the City and hold the City harmless from any liability to any person resulting from any damage or injury occurring in connection with the permitted event proximately caused by the action of the Permittee, the

sponsoring organization, its officers, employees or agents or any person under their control insofar as permitted by law.

- (7) (Editor's Note: This subsection, 741.03 (d)(7) is intentionally left blank by Ordinance 22-2008, passed June 3, 2008.)
 - (8) Fees for use of park facilities. No application for permit shall be granted unless the applicant has paid, within the time prescribed by the Recreation and Parks Director, a user fee and any other required fee in an amount in accordance with the schedule of fees set by the Recreation and Parks Director and approved by City Council. No application for permit shall be granted unless all required fees are paid as set forth herein.
 - (9) Insurance. In the event the applicant expects more than 100 people to attend, the applicant shall procure and maintain at all times during its use of Park property, insurance in such amounts and with such coverages as shall reasonably be required by the City and shall name the City as an additional insured thereunder. The amounts and type of insurance required shall be determined by the Public Works Department based upon the size of the event and the nature of the facilities involved in it. The Department of Public Works shall prepare a uniform schedule of insurance guidelines and the amount of insurance required is not based on or influenced by, the nature of the event, and specifically whether it involves controversial expressive activity likely to incite violence or onlookers or opponents. Applicant shall provide the City with a certificate from an insurer evidencing such coverage prior to applicant's use of Park property, and within the time prescribed by the Recreation and Parks Director. The certificate shall also provide that the insurer shall give the City reasonable advance notice of insurer's intent to cancel the insurance coverage provided. No insurance is required for an event where less than 100 people are expected to attend. The insurance requirement is subject to the waiver provisions of Section 741.03 (f)(1)-(3).
 - (10) Permits not transferable. No permit or preliminary approved permit application may be transferred.
- (e) Processing of Application for Permits.
- (1) Order. Applications for permits shall be processed in order of receipt; and the use of a particular park or part thereof shall be allocated in order of receipt of fully executed applications accompanied by the application fee.
 - (2) Conditional approval. Applications for permits for activities or events which require insurance, approval or permits from other governmental entities, or compliance with other terms or conditions, will be reviewed and, if the application otherwise conforms to all other requirements, a conditional approval will be issued. If, within the time prescribed by the Recreation and Parks Director, any required fee is not paid, or an insurance certificate evidencing the requisite insurance is not filed with the Department of Public Works, or the approval or permit of other governmental entities has not been received, or the other terms and conditions have not been met, the conditional approval will automatically

expire, the application for permit will be deemed denied and no written notice of denial will be required. For events or activities which involve the use of special facilities, or activities described in Section 741.03(d)(1)A.3., 4., 7., 8., 9 or 10, above all terms and conditions for issuance of the permit, including securing insurance and payment of all fees, must be completed at least thirty days prior to the event unless a longer time period is prescribed by the Recreation and Parks Director.

No permit shall be issued unless all applicable fees are paid within the times prescribed by the Recreation and Parks Director. Failure to pay fees within that time shall cause the application to be deemed denied, without further notice to the applicant.

- (3) Written denials. If no written denial or conditional approval is issued within fourteen days of the date on which a permit application is fully completed, executed and filed with the appropriate officer or employee, as designed by the Recreation and Parks Director, the application shall be deemed to have been granted a conditional approval pursuant to subsection (e)(2) hereof. Provided, however, the City may extend the period of review for an additional fourteen days by issuance of a written notice of extension. If, prior to the expiration of the extended review period, no written denial is issued, the application for permit shall be deemed to have been granted a conditional approval pursuant to subsection (e)(2), above.
- (4) Notice of extended review or denial of issuance of permit. Written notice of denial or notice of extension shall be served on the applicant by personal delivery, or by deposit in United States mail, with proper postage prepaid, to the name and address set forth on the application for permit.
- (5) Contents of notice: grounds for denial. Notice of denial of an application for permit shall clearly set forth the grounds upon which the permit was denied and where feasible, shall contain a proposal by the City for measures by which the applicant may cure any defects in the application for permit or otherwise procure a permit. Where an application or permit has been denied because a fully executed prior application for the same time and place has been received, and a permit has been or will be granted to the prior applicant authorizing uses of activities which do not reasonably permit multiple occupancy of the particular area, the City shall propose an alternate place, if available for the same time, or an alternative time, if available for the same place.
To the extent permitted by law, the City may deny an application for permit if the applicant or the person on whose behalf the application for permit was made has on any prior occasion made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of any prior permit issued to or on behalf of the applicant. The City may also deny an application for permit on any of the following grounds:
 - A. The application for permit (including any required attachments and submissions) is not fully completed and executed;

- B. The applicant has not tendered the required application fee with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, within the times prescribed by the Recreation and Parks Director;
 - C. The application for permit contains a material falsehood or misrepresentation;
 - D. The applicant is legally incompetent to contract or to sue and be sued;
 - E. The applicant or the person on whose behalf the application for permit was made has on prior occasions damaged City property and has not paid in full for such damage, or has other outstanding and unpaid debts to the City;
 - F. A fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular park or part hereof;
 - G. The use or activity intended by the applicant would conflict with the previously planned programs organized and conducted by the City and previously scheduled for the same time and place;
 - H. The proposed use or activity is prohibited by or inconsistent with the classifications and uses of the park or part thereof designated pursuant to this chapter, subsection (a), above;
 - I. The use or activity intended by the applicant would present an unreasonable danger to the health, safety or welfare of the applicant, or other users of the Park, of City employees or of the public;
 - J. The applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations of the City concerning the sale or offering of sale of any goods or services; or
 - K. The use or activity intended by the applicant is prohibited by law, by this Code and ordinances of the City.
- (6) Amendment or revision of applications. Any amendment or revision of an application or permit shall for purposes of determining the priority of the application of permit, relate back to the original filing thereof; but the time in which the City shall grant or deny the application for permit and service notice of such granting or denial shall be computed from the date of the amendment or revision.
- (f) Procedures for Review: Waivers.
- (1) Review by Director of the Department of Public Works.
- A. Any applicant who is denied a permit or denied a request for a waiver of an application fee, user fee, or certificate of insurance, or a permittee who has received a fine pursuant to this section may, within seven days of the service of notice of such determination, file a written appeal from such determination with the Director of the Department of Public Works;

- B. The Recreation and Parks Director shall have seven days from the date on which the appeal was received in which to serve upon the applicant a notice that he/she has affirmed, modified or reversed the denial;
 - C. Such notice shall be deemed served upon the applicant or permittee when it is personally delivered or when it is sent by United States mail, with proper postage prepaid, to the name and address set forth on the application for permit;
 - D. If such notice is not served upon the applicant or permittee within the seven (7) days of the date upon which the appeal was filed, then the denial shall be deemed reversed.
- (2) Form of appeals. Any appeals filed pursuant to this section shall state succinctly the grounds upon which it is asserted that the determination should be modified or reversed and shall be accompanied by copies of the application for permit, the written notice of the determination of the City, and any other papers material to the determination.
- (3) Waiver of requirements. Any requirements for an application fee, user fee, or certificate of insurance shall be waived by the Recreation and Parks Director, if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity. Fees for equipment and services shall not be waived pursuant to this subsection. Application for a waiver of an application fee, user fee, or certificate of insurance shall be made in writing and must include an affidavit by the applicant and sufficient financial information about the applicant to enable the Recreation and Parks Director to determine whether the requirement(s) would be so financially burdensome that it would preclude the applicant from using Park property for the proposed activity. If it appears that the applicant does not have sufficient funds to satisfy the user fee requirements prior to the proposed event, but that the applicant intends to raise sufficient funds at the event, the Solicitor's Office shall require the applicant to pay such user fee out of the proceeds of the proposed event. If no written denial is issued within fourteen (14) days of the date on which the application for such waiver is fully completed, executed and filed with the Solicitor's Office, the waiver request shall be deemed approved, contingent upon the applicant complying with all other permit requirements. Denials of requests for such waivers shall be subject to appeal procedures contained in subsection (f)(2) hereof.

(g) Violations and Penalties. Any person who shall fail or refuse to perform any act, duty or obligation imposed by this article shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, and in default of payment thereof, may be imprisoned for not more than 30 days. A separate offense shall be deemed committed on each day during or on which a violation or failure to comply occurs or continues.
(Ord. 22-2008. Passed 6-3-08.)

741.04 FISHING IN KIWANIS LAKE.

No person other than children under sixteen years of age shall fish in Kiwanis Lake, located in Farquhar Park.

(Ord. 22-2008. Passed 6-3-08.)

741.05 PERMITTED ADVERTISING.

The Administration may sell advertising to be placed in Hoffman Field Numbers 1, 2 and 3, Memorial Stadium and the Municipal Ice Rink. The Administration, with the consent of Council by resolution, may designate additional public parks to receive advertising and promulgate rules and regulations governing all aspects of advertising to be placed within a designed public park. (Ord. 22-2008. Passed 6-3-08.)

741.99 PENALTY.

Except for the penalties outlined for violating Section 741.02(q) and 741.03(g), whoever violates any other provisions of this article shall, on conviction, be fined not more one thousand dollars (\$1,000) and in default of payment thereof shall be imprisoned not more than five days.

The court may waive, when appropriate, the penalties outlined in this section in lieu of completion of community service or other diversionary programs as an alternative sentence.

(Res. 100-2008. Passed 6-3-08.)