

## TITLE VI, CHAPTER 120: Annual Benson Mule Days Festival and Special Event Ordinance

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**120.01 Purpose.** The Annual Benson Mule Days Festival, a town-sanctioned, town-wide festival, attracts an extraordinarily large number of persons who, during the course of the festival, perambulate and go about the entirety of the corporate limits and extra-territorial jurisdiction of the Town of Benson and which lasts a greater duration than other community events. Because of crowded conditions, certain activities, such as the riding of horses, mules and other equines on horseback and via equine-drawn wagonry, and the riding of golf carts pose hazards presenting the possibility of injury to persons and damage to property. Additionally, Benson Mule Days features organized activities, live entertainment, food concessions, widespread camping, and hundreds of authorized exhibitors who display and offer for sale artwork, crafts, and related items. The Town of Benson issues permits to persons desiring to place or maintain an exhibit or concession stand or to otherwise engage in outdoor sales. The exhibition, offering for sale and selling of merchandise or food and beverages by unauthorized vendors poses a threat to the public safety and welfare, interferes with planned traffic flow and the maintenance of order, frequently violates the town zoning code, and detracts from the authorized exhibits and concessions. The purpose of this section is to protect and promote the public health, safety, welfare, and recreation, by regulating certain commercial activities at Benson Mule Days and other Special Events, whether they be town-sanctioned, town-sponsored, or events of a private nature to which these provisions are made to apply by action of the Town of Benson Board of Commissioners.

**120.02 Applicability.** This Chapter shall apply to that town-sanctioned festival known as Benson Mule Days, held annually the last week of September and may be made to apply to any other town-sanctioned or sponsored festival or event by action of the Town of Benson Board of Commissioners.

A. As to Mule Days, this Chapter shall apply from 12:00 noon on the Sunday preceding the event weekend, to wit: the Sunday which begins the fourth week of September, through 5:00 P.M. on the following Sunday, or the rain date, if necessary, to all of the corporate limits of the Town of Benson, North Carolina. Insofar as the provisions of this Chapter conflict with other Town of Benson Ordinances or policies, during the aforementioned applicable time the terms and provisions of this Chapter shall control and be paramount to any provision of any ordinance or policy not herein contained.

B. The time, area, and boundaries of any other event to which these provisions shall be made to apply shall be determined by the Town Board of Commissioners.

### **120.03 Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- A. *Mule Days*. The term “Mule Days,” “Benson Mule Days,” or “Annual Benson Mule Days Festival” shall be construed to mean the annual festival held each September during the fourth week of said month.
- B. *Special Event*. The term “Special Event” shall construed to mean the following:
1. An event or assembly:
    - (i) of ONE HUNDRED (100) or more people gathered together in a public or private place; *and*
    - (ii) which interferes with the normal flow or regulation of traffic upon streets, sidewalks, rights-of-way, or the normal use of parks or other public areas; *and*
    - (iii) which includes some sort of performance or production open to the public; *and*
    - (iv) which is commercial in nature.
  2. Special Events include, but are not limited to, festivals, demonstrations, concerts, fairs, carnivals, circuses, street dances, or events for which music is broadcast. A Special Event shall not include events held on private property which do not interfere with normal flow or regulation of traffic upon streets, sidewalks, or rights-of-way, or the normal use of parks or other public areas, sporting events, any town-sponsored event, or events which are not held for a commercial purpose. For the purpose of this Chapter, “Commercial” shall be construed to mean an event that is produced with the intention of producing income or financial benefit to some entity.
  3. The Town Manager may, if he or she deems an event to be of sufficient size or significance, or if he or she expects an event to attract a significant number of people to a particular portion of the Town, deem an event to be a Special Event subject to the terms of this Chapter.
- C. *Town-sanctioned*. A Special Event which is Town-sanctioned carries the formal approval and support of the Town of Benson Board of Commissioners but is not paid for or conducted at

the direction of the Town of Benson or an officer, employee, agent or subsidiary entity thereof acting in their official town capacity.

- D. *Town-sponsored.* A Special Event which is Town-sponsored is paid for in major part by the Town of Benson and is conducted at the direction of an officer, employee, agent or subsidiary entity thereof acting in their official town capacity.
- E. *Town Property.* Any property owned, leased, or occupied by the Town of Benson.
- F. *Sponsoring Entity.* Any entity which pays for in major part and which conducts or controls the conducting of any Special Event.
- G. *Applicant.* The Entity making the application for a Special Event Permit.
- H. *Proposed Event.* The Special Event as set forth in the Applicant's application.
- I. *Event Area.* The area delineated on the Applicant's Special Event Permit as the boundary of the Special Event.

**120.04** *Disclaimer of Ownership, Control and Authority in favor of the Benson Area Chamber of Commerce.* The term "Benson Mule Days" has traditionally been used by the Benson Area Chamber of Commerce, Inc., a North Carolina non-profit corporation in connection and association with said organization's promotion and production of the Annual Mule Days festival. The Town of Benson assumes no responsibility for any event the Benson Area Chamber of Commerce or any other entity sponsors or conducts during the Annual Mule Days Festival nor any other event or festival.

**120.05** *Requirement of a Permit to Conduct a Special Event.* No entity shall hold, conduct, or participate in a special event unless a permit for the same has been issued for such event upon timely written application for such event has been made to the Town of Benson as set forth herein. This permit shall be referred to as a "Special Event Permit."

- A. *Town Manager Authorized to Issue or Deny Permit.* The Benson Town Manager shall have the authority to issue a Special Event Permit if in his or her opinion the permit application meets all the requirements as set forth herein and if in his or her opinion it is appropriate to do so considering the effect such a Special Event may have on public safety and private property rights.

The Town Manager shall have the authority to deny a Special Event permit or to revoke a previously issued Special Event Permit for any reason if in his or her opinion it is appropriate to do so in order to protect lives and property, to prevent breaches of the peace, when police resources are incapable of maintaining order, and/or when the Applicant is in non-compliance with the terms and provisions of this Chapter.

- B. *Requirements for Application for Special Event Permit.* Applications may be approved by the Town Manager upon meeting the following requirements:
  - 1. *Application.* A written application for a Special Event Permit, including street closures, must be submitted to the Town Manager no less than NINETY (90) days prior to the event, however, in the Town Manager's sole discretion, the ninety (90) day requirement may be waived if good cause is shown. A detailed site map shall be included in the application indicating, at a minimum, the following information as applicable:

- i. Stage area;
  - ii. Concessions;
  - iii. Tables and seating area;
  - iv. Designated beer and wine gardens;
  - v. Parking areas;
  - vi. Location of any events; and
  - vii. Number and location of sanitation and potable water facilities.
2. *Alcoholic Beverages.* A statement of the Applicant's intent whether to serve or to allow the consumption of beer and wine shall be submitted. If serving alcoholic beverages, a copy of the applicant's North Carolina Alcoholic Beverage Control (ABC) permit demonstrating that the applicant is properly licensed to allow the consumption of alcohol within the application-defined area, and a verified statement by the applicant that:
  - i. The applicant's ABC permit is in good standing;
  - ii. The Applicant has not been cited for any violation of any ABC permit within the previous three (3) year period. If the applicant has been cited, the Applicant must provide a statement describing the circumstances for which the Applicant was cited and describing what, if any, penalty was imposed for the incident.
3. If the Applicant intends to serve alcoholic beverages, a statement that the Applicant has informed the North Carolina Department of Public Safety Alcohol Law Enforcement Agent (ALE) responsible for the area wherein the event will take place and complied with any requirements, permits, or regulations required by the ALE.
4. *Indemnity.* The Applicant, or an duly and legally authorized officer or member of the sponsoring entity, must execute an agreement to wholly indemnify and hold harmless the Town of Benson from any and all claims which may arise incidental to or be occasioned by any occurrence or happening at, on, or during the time and place set forth in the Permit Application.
5. *Notification to Appropriate Town Departments; Review by Town Attorney.* The Town Manager shall notify all department heads he or she deems appropriate given the nature and character of the Special Event proposed in any application for Special Event Permit he or she receives before a Special Event Permit is issued to make said department heads aware of the application and to provide the department heads time to determine if there are any issues for their respective departments to address incidental to the application and the Special Event for which it is made. The Town Manager is expressly authorized to present the entire Special Event Permit Application, including any attachments or exhibits thereto, to the Town Attorney for review and shall request the Town Attorney to pass upon the Special Event Permit Application's conformance to this Chapter.
6. *Police Officers.* The Town Manager shall present the Benson Chief of Police the application for Special Event Permit and related documents and provide the Chief of Police adequate time to review same and render an opinion to the Town Manager as to the number of police officers required to maintain peaceful order for the proposed

Special Event. In rendering this decision, the Benson Chief of Police shall consider, but is not limited in his or her consideration, the following:

- i. His or her own prior knowledge and experience;
- ii. Previously issued permits of a similar nature;
- iii. Attendance estimates; and
- iv. The location of the proposed Special Event.

7. *Liability Insurance Requirements.* The Applicant, or a duly authorized representative of the sponsoring entity, shall provide, to the complete satisfaction of the Town of Benson, a current general liability or short term special event liability insurance policy written by a reputable insurance company licensed to do business in the State of North Carolina and which contains an endorsement specifically naming the Town of Benson as an additional insured and provides a waiver of subrogation in favor of same. The policy shall include:

- i. premises/operations and products liability coverage;
- ii. hired and non-owned auto liability coverage;
- iii. owned auto liability coverage (if applicable);
- iv. Property damage liability;
- v. Coverage for event employees and/or volunteers;
- vi. dram-shop or liquor liability coverage (if applicable); and,
- vii. any other policies, coverage, and/or endorsements as the Town Manager, in his or her sole discretion, shall require.

8. To be acceptable, in addition to the requirements set forth in this subsection (f), the insurance policy required by this section shall include the following which are minimum requirements not intended to be an exhaustive list:

- i. Affirmative language that the activities to be held at the Special Event by Applicant or any entity Applicant may grant license to at the proposed event are covered by said policy(ies);
- ii. Minimum coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence with no aggregate limit;
- iii. Language stating that the required coverage set forth herein shall be in full force and effect for the entirety of the proposed event, including any preparation or set-up activities as well as any break-down or cleanup activities, for the entire premises of the proposed event, and that all activities and ancillary preparatory and/or cleanup, if any, that Applicant proposes to conduct at the proposed Special Event are covered by such policy or policies of coverage.

C. *Factors for Town Manager to Consider when Determining whether to Grant or Deny Permit Application.* In the review of any application for a Special Event Permit, the Town Manager shall be guided by, but shall not be limited to, the following considerations:

1. The number of permits issued and the area for which such permits are issued in relation to:
  - i. crowd density;
  - ii. traffic control;

- iii. the ability to protect persons and property;
    - iv. fire prevention and control;
    - v. general safety and availability of Town of Benson assets and resources to ensure the reasonable protection of the general public;
    - vi. the disruption of normal business for merchants in the area; and,
    - vii. Noise level of the proposed event and the effect of any noise emitted on surrounding areas.
  2. In those instances in which the Town Manager, or his or her designee, considers Town of Benson resources to be insufficient to meet the above considerations, the Town Manager, or his or her designee, may require, at his or her sole discretion, the applicant for a Special Event permit to provide, at Applicant's expense, Benson Police officers or those officers designated by the Town of Benson Chief of Police, in his or her sole discretion, for the duration Special Event at the prevailing hourly rate then charged for each officer required. In considering the number of officers required by this Section, the Town Manager shall use standards promulgated by the Town of Benson Chief of Police.
- D. *Authority to Define Special Event Area; Close Streets.* The Town Manager shall have the authority to designate the boundaries of any Special Event area. To accommodate such an event, the Town of Benson Chief of Police shall have the authority to temporarily close a public right-of-way or other Town owned properties. Whether incidental to a Special Event or otherwise, the procedure for a street closure during Mule Days shall be as follows:
  1. Applicant shall provide in the Special Event Application a provision outlining any requested street, road, sidewalk, or other right-of way closures Applicant desires to close to normal traffic during the term of the Special Event. This provision shall contain detailed maps, drawings or schematics depicting the proposed closure area as well as a plan of ingress and egress for vehicular, pedestrian, golf cart, and equestrian traffic, if applicable, to the proposed Special Event Area.
  2. If Applicant seeks to so close a street, road, sidewalk, or other right-of-way to normal traffic and such street, road, sidewalk, or other right-of-way is under the control of and regulated by the North Carolina Department of Transportation, Applicant shall demonstrate the North Carolina Department of Transportation's express written permission to so close said street, road, sidewalk, or other right-of-way including the time and location of said closure together with any stipulations placed thereon, if any. The burden to determine if a street, road, sidewalk, or other right-of-way is under the control of or regulated by the North Carolina Department of Transportation rests solely upon the Applicant and not the Town of Benson.
  3. If approved, Applicant must, at its sole expense, notify all affected property owners who may be inconvenienced by any road closure.

#### **120.06 Regulations.**

1. *Maintenance of the Event Area.* The Applicant shall be solely responsible for maintenance the Event Area, all debris and/or refuse shall be removed by the Applicant at regular intervals to

ensure such debris and/or refuse does not accumulate, to maintain an orderly appearance, and to prevent the attraction of vermin, insects, or other pests to the Event Area. The Applicant shall indicate in the Application for Special Event conformance with this provision and provide a detailed plan for how such conformance will be undertaken by Applicant.

2. *Special Event Area to be Maintained Free of Obstructions.* The Applicant shall ensure that all paths, sidewalks and other pedestrian rights-of-way are maintained free from any obstruction. The Applicant shall maintain any street that remains open to vehicular traffic during the term of the Special Event within the delineated special event area.
3. *Removal of Structures and Debris.* Applicant shall remove all obstructions and additions to the event area immediately upon the completion of the Special Event in order to open the streets and rights-of-way to public use as soon as possible. The Applicant shall remove all remaining debris or refuse within four (4) hours after the conclusion of the Special Event.
4. *Conformity with Town Fire Code and related Regulations.* Applicant shall obey and observe all applicable provisions of the fire code and shall provide the Town of Benson Fire Chief or his or her designee the right and opportunity to inspect the Special Event area for conformity therewith. The Town of Benson Fire Chief is authorized to promulgate rules and standards for conducting a Special Event that relate to requirements for fire safety and safety inspections. Any rule, regulation or standard so promulgated by the Town of Benson Fire Chief shall be observed and abided by as if same were herein contained.
5. *Camping, Utility, Peddler/Itinerant Merchant, and Golf Cart Permits; Fees.*
  - a. *Camping.* During Mule Days, any camping activities which may occur anywhere in the corporate limits of the Town of Benson shall occur as set forth in Town of Benson Ordinance Chapter 98, *except* as to the fees charged for such Camping Activities, which shall be charged as per Section 120.07 of this Chapter.
  - b. *Utility Connection Fees.* Any entity wishing to establish any utility connection during a Mule Days to a temporary structure, pole, or similar temporary building or apparatus shall only do so in accordance with this section. This section shall not apply to the establishment or hooking up of any utility service to a permanent structure which is not being utilized in any way incidental to a Mule Days related activity. To establish any utility connection to a temporary structure, pole, or similar temporary building or apparatus, the following procedure shall be followed:
    - i. Any person wishing to so establish service shall apply to the Town of Benson Public Works Department for such service;
    - ii. Such application shall occur no less THIRTY (30) days prior to the first instance the temporary structure, pole, or similar temporary building or apparatus will be utilized; or, if such temporary structure, pole, or similar temporary building or apparatus will be utilized for any camping, peddler or itinerant merchant activity, no less than THIRTY (30) days prior to the commencement of said activity. If the THIRTY (30) day requirement is not complied with, the Town of Benson shall charge additional fees for the establishment of said service, as set forth in Section 120.07 of this Chapter.

- iii. Before any utility service may be provided, any entity requesting said service shall provide representatives and/or employees of the Town of Benson opportunity to inspect any temporary structure, pole, or similar temporary building or apparatus to which utilities will be provided. This inspection shall determine whether the requested utility(ies) can be safely delivered to the requested location. If utility services cannot be safely delivered to the requested temporary structure, pole, or similar temporary building or apparatus, the requested activation will not be performed.
  - c. *Peddler/Itinerant Merchants*. If any Peddler or Itinerant Merchant wishes to operate or conduct business in any fashion anywhere in the corporate limits of the Town of Benson during Mule Days, such an entity shall only do so as set forth in Town of Benson Ordinance Chapter 115, *except* as to the fees charged for such Peddler or Itinerant Merchant activities, which shall be charged as per section 120.07 of this Chapter.
  - d. *Application for Golf Cart Permit*. If any entity wishes to operate a golf cart anywhere in the corporate limits of the Town of Benson during any Special Event, such an entity shall only do so as set forth in Town of Benson Ordinance Chapter 70.70, *except* as to the fees charged for such golf cart permit and operation, which shall be charged as per section 120.07 of this Chapter.
- 6. *Limitations on Noise, Concerts, Broadcasts, Loudspeakers, and the Like*. Town of Benson Ordinance Chapter 96 and all the provisions therein contained shall be controlling during the duration of Mule Days *except* the following language will also control in addition to, or in preemption of where the provisions conflict, the provisions of Chapter 96:
  - a. During any Special Event, the loud noises specified in Town of Benson Ordinance Chapter 96 shall be unlawful if they continue, persist, or occur during the hours of 1:00 a.m. and 7:00 a.m.
- 7. *Alcohol at Special Events*. Town of Benson Ordinance Chapter 112 shall control during any Special Event.
- 8. *Parades*. Town of Benson Ordinance Chapter 99.06 *et. seq.* and all the provisions therein contained shall control during any Special Event.
- 9. *Rules Concerning Horses and other Equine*. Town of Benson Ordinance Chapter 91.03 shall control during any Special Event *except* the following language will also control in addition to, or in preemption of where the provisions conflict, the provisions of Chapter 91.03:
  - a. No horse, mule, donkey or equine animal of any type or species shall be allowed to travel or remain within 10 feet of any closed street, pedestrian thoroughfare, area where food and/or beverages are served, area where people typically loiter, repose, or remain for periods of time greater than one (1) hour, and/or other areas as may be defined by the Town Manager.

120.07 Fees for Required Permits and Services.

The following table of fees shall be charged for any permit or other service required by this Chapter:

<u>Permit/Service</u>					<u>Fee</u>	
Special Event Permit:						
Golf Cart Permit:						
Utility Pole Hook Up (greater than 30 days prior to event):						
Utility Pole Hook Up (30 days or less prior to event):						
Camping Permit:						
Parade Permit:						
Itinerant Merchant Permit:						

120.08 *Preemption of other Ordinances, Rules, Procedures and Regulations in Favor of this Ordinance during Special Events.* As to any Special Event and only as to Special Events, as herein defined, where any provision of this Chapter conflicts with any provision of any of the Town of Benson Ordinances, this Chapter shall preempt any other provision and shall control and be paramount as to any Special Event.

120.09 *Penalty.* Any violation of any of the provisions of this Chapter shall be punished as provided in Chapter 10.99 of this Code of Ordinances.

120.10 *Application Form.* The Town Manager is authorized to promulgate rules, standards and establish any forms he or she deems necessary or expedient to the effective implementation and administration of this Chapter, and any such rules, standards and/or forms shall be required as though they were set forth herein in their entirety.