

RESOLUTION NO. 2010-033

A RESOLUTION TO APPROVE THE AGREEMENT BETWEEN THE VILLAGE OF WAYNESVILLE AND THE OHIO SAUERKRAUT FESTIVAL COMMITTEE AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Sauerkraut Festival Committee sponsors on an annual basis the Ohio Sauerkraut Festival; and

WHEREAS, the event is held on the 2nd full weekend of October each year; and

WHEREAS, the Village Council of the Village of Waynesville finds that the Sauerkraut Festival provides substantial benefit to the Village of Waynesville, the Township of Wayne, the Wayne Local School System, and other charitable organizations throughout our area; and

WHEREAS, the Village of Waynesville recognizes the good will that is created by the Ohio Sauerkraut Festival;

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WAYNESVILLE, MORE THAN TWO-THIRDS OF ALL ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1. The Village Manager of the Village of Waynesville is authorized to sign the agreement, which is attached hereto and marked as Exhibit "A".

Section 2. The exercise of the police powers recited in this agreement is beyond the norm of the Village of Waynesville and the Village of Waynesville determines that it is in the best interests of the Village of Waynesville and it is beneficial to the health, safety, and welfare of the Village residents, as well as those business invitees, to enter into this agreement to provide the services rendered therein.

Section 3. This Resolution is an emergency measure necessary for the public health, safety, and welfare and shall be effective immediately. The reason for said emergency is the need to grant to the Village Manager the authority to sign this agreement prior to the Ohio Sauerkraut Festival.

Adopted this _____ day of _____ 2010.

Attest: _____
Staci Morris, Clerk of Council

Earl J. Isaacs, Mayor

359482.1

First Reading -
Second Reading -
Vote – yeas
nays

Effective Date -

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**SAUERKRAUT FESTIVAL
VILLAGE OF WAYNESVILLE
POLICE AGREEMENT**

The parties to this Agreement are the Village of Waynesville (referred to in this document as the "Village") and the Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce (referred to in this document as the "Committee"). The purpose of this Agreement is to provide Waynesville Police Department special detail duty to the Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce for the 2010 and 2011 Ohio Sauerkraut Festivals (referred to in this document as the "Festival").

Now, therefore, the parties, each in consideration of the mutual promises and obligations assumed herein by the other, agree as follows:

1. The Committee agrees to pay to the Village the sum of nine-thousand and two-hundred dollars (\$9,200) for police staffing, crowd control, patrols, security, and all other items delineated herein for the Festival.
2. In the event of a cancellation of the Festival prior to the scheduled start, the terms of this Agreement shall have no force or effect and shall be null and void. If the Festival is cancelled prior to its scheduled completion, the Village shall be reimbursed by the Committee for any time worked by its officers at the Festival.
3. Village police officers shall not be responsible for enforcing any Festival rules or regulations that are in conflict with any local, state, or federal ordinances, statutes, or laws.
4. Police staffing shall be established at the discretion of the Village, particularly in instances of large crowds or traffic control in consideration of public safety. Minimum staffing shall be established by the Village at the time of scheduling. The duties and responsibilities of these police officers shall be to assist with: crowd control; traffic control; overnight security; parking issues; setup/teardown/removal of barricades; posting/removal of "Street Closed" and "No Parking" signs; clearing Main Street of vehicles prior to Festival set up; providing security and basic police protection throughout the Festival; law

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enforcement, in general; locating lost or missing persons; providing emergency notifications; assisting with Festival shuttles; and carrying out other police-related directives as requested by the Committee. The Village shall not be responsible for the costs associated with signage materials.

5. The Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce shall indemnify, defend, and hold harmless the Village of Waynesville, its officers, officials, employees, and volunteers from and against any and all liability, claims, damages, costs, expenses, awards, fines, and judgments (*including, without limitation, costs, attorney fees, expert witness fees, and other expenses of litigation*) of every nature arising out of or in connection with performance of work as stipulated by this Agreement, or the Village's failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Village or its officers.

5. The Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce shall maintain comprehensive general liability insurance in the amount of \$1,000,000.00 per occurrence with an annual aggregate limit of at least \$2,000,000.00 which shall be maintained in force under a policy or policies issued by an issuer of recognized responsibility. The "Village of Waynesville" shall be named as an additional insured for the insurance recited in this paragraph and a Certificate of Insurance shall be provided to the Village Manager each year, prior to the beginning of the Festival.

6. This Agreement contains the entire Agreement between the Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce and the Village of Waynesville with respect to the subject matter thereof, and supersedes all prior written or oral agreements between the parties. No representations, promises, understandings or agreements, otherwise not herein contained, shall be of any force or effect.

7. No modification or amendment of any provision of this Agreement shall be effective unless made by special instrument, duly executed by the party to be bound thereby which refers specifically to this Agreement and states that an amendment or modification is being made in the respect as set forth in such amendment.

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8. Should any portion of this Agreement be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Agreement shall remain in full force and effect unless revised or terminated pursuant to any other section of this Agreement..
9. No waiver by either party of any breach of any provision of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be, or construed as a further or continuing waiver of any such breach or as a waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require the performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.
10. Neither party shall assign any of its rights or delegate any of its duties under this Agreement without the written consent of the other.
11. The Village hereby agrees to assume responsibility for all local, state, and federal taxes, workers' compensation, liability insurance, and any other pertinent employee-related employment taxes, fees, charges, and benefits. While the Village acknowledges that it has liability insurance, the parties to this Agreement refer to Paragraph 5, wherein the Ohio Sauerkraut Festival Committee/Waynesville Area Chamber of Commerce has agreed to provide comprehensive general liability insurance in the amount of \$1,000,000.00 per occurrence with an annual aggregate limit of at least \$2,000,000.00. Within thirty days of the close of the Festival, the Village shall submit a time log for time worked by each officer at the Festival. It shall be the responsibility of the Village to pay its officers for time worked at the Festival and it shall be the responsibility of the Committee to pay the Village in accordance with Paragraph 1 of this Agreement. In no event shall the aggregate of all monies paid to the individual officers exceed the amount indicated in Paragraph 1. All Village police officers shall be deemed to be employed by the Village, and not by the Committee, at all times pertinent to this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly-authorized representatives on the dates shown below.

Entered into this _____ day of _____, 2010, for the 2010 and 2011 Ohio Sauerkraut Festivals.

Committee Chair Date

Village Manager Date

Clerk of Council Date