

December 31, 2025

Sussex County Board of County Commissioners
Sussex County Administrative Center
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Newton, New Jersey 07860

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Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, writes to express serious concerns with the Board's permit policy for expressive activity at the Newton Green. The policy imposes unconstitutional barriers to core First Amendment activity in a traditional public forum. Just recently, the Township of West Caldwell formally withdrew a similar proposal from consideration after FIRE shared its concern.¹ FIRE urges the Board to follow West Caldwell's lead in preserving the First Amendment rights of its constituents by repealing or amending the policy, and ensuring any future version is constitutionally compliant.

On June 11, the Board adopted a resolution requiring any person or group seeking to use the Green for a public gathering—regardless of size or type—to sign a use application; provide proof of commercial general liability insurance for property damage, bodily injury, and personal injury of no less than \$1 million per occurrence and \$2 million in total; and provide the same of no less than \$500,000 for auto insurance for bodily injury and property damage for all vehicles that are part of the event.² Applicants also must execute a Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement. The use application requires

¹ In August 2025, the Township of West Caldwell Mayor and Council introduced Ordinance No. 1898 to establish a permitting scheme for “demonstrations” and “special events” with 25 attendees or more. Among other constitutional infirmities, it would have required applicants to give 30 days’ advance notice and obtain a \$2 million insurance policy regardless of the size or nature of an event, held event organizers liable for all unanticipated costs in administering the event, and given the town broad discretion to reject applications based on anticipated controversy. FIRE wrote the Council and held an informational webinar for residents who opposed the ordinance, which the Council thereafter withdrew. *West Caldwell, New Jersey: Proposed Ordinance Restricts Public Protest*, FIRE, <https://www.thefire.org/cases/west-caldwell-new-jersey-proposed-ordinance-restricts-public-protest>.

² Sussex County Board of County Commissioners, *Commissioner Meeting of June 11, 2025 at 6:00 PM*, <https://www.sussex.nj.us/uppages/BCC/2025/20250611%20-%20BCC%20Agenda.pdf>.

applicants to bear any and all costs for cleanup and returning the Green back to its original state in addition to accepting all liability for any damage to the Green.³

The Supreme Court has long recognized that the public has “strong free speech rights” in traditional public forums like streets, sidewalks, and parks, which, “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”⁴ Government authority to “limit expressive activity” in these forums is thus “sharply circumscribed.”⁵ While municipalities may adopt reasonable time, place, and manner restrictions, they must (1) be content-neutral, (2) be narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels for communication.⁶ The Board’s permit policy for the Green fails this test.

Use Application Requirement

Requiring advance application by every individual or group of any size to use the Green for a “public gathering” is unconstitutional. Federal courts have consistently struck down laws that require individuals and small groups to notify the government or seek its permission before engaging in any expressive activity in a traditional public forum.⁷ While Sussex may require permits for events that may involve large groups or exclusive use of the Green, the undefined term “public gathering” reaches an extremely broad range of expressive activity—from book club meetings to even a group of three people handing out political pamphlets—that the First Amendment bars the County from subjecting to advance notice requirements.⁸

³ County of Sussex, *Use Application for Newton Green N.J.*, Rev. Sept. 2025, <https://www.sussex.nj.us/documents/Sussex%20County%20Newton%20Green%20Facility%20Use%20Application.pdf>.

⁴ *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (cleaned up).

⁵ *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983).

⁶ *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

⁷ See, e.g., *Berger v. City of Seattle*, 569 F.3d 1029, 1048 (9th Cir. 2009) (*en banc*) (“[N]either we nor the Supreme Court has ever countenanced” a policy that “requires single individuals to inform the government of their intent to engage in expressive activity in a public forum.”); *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005) (striking down licensing scheme for public parades because city’s “significant interest in crowd and traffic control, property maintenance, and protection of the public welfare is not advanced by the application of the [o]rdinance to small groups,” and noting “[p]ermit schemes and advance notice requirements that potentially apply to small groups are nearly always overly broad and lack narrow tailoring”); *Knowles v. City of Waco*, 462 F.3d 430, 436 (5th Cir. 2006) (“ordinances requiring a permit for demonstrations by a handful of people are not narrowly tailored to serve a significant government interest”); *Cox v. City of Charleston*, 416 F.3d 281, 283, 285–86 (4th Cir. 2005) (invalidating ordinance sections barring “any person” from participating in “any parade, meeting, exhibition, assembly or procession” on public streets or sidewalks without a permit for failure to show application to small groups was necessary to keep streets and sidewalks safe, orderly, and accessible).

⁸ The policy and use application also fail to state how far in advance the application and proof of insurance must be submitted, depriving residents of fair notice of what the policy requires. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Any required length of advance notice must be reasonable and contain an exception for spontaneous expression in response to fast-breaking events. *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007); *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d at 607.

Insurance requirements

The policy unconstitutionally imposes blanket requirements—regardless of event type or size—for commercial general liability insurance of no less than \$1 million per occurrence and \$2 million in total and \$500,000 in auto insurance. Even assuming the Board can impose minimum insurance requirements, they must be tied to objective, content-neutral criteria reflecting the specific event’s actual risks.⁹ In fact, the U.S. Court of Appeals for the Tenth Circuit has invalidated policy language identical to that here.¹⁰

Even were \$1,000,000 of general liability coverage justifiable for *some* large events, it fails narrow tailoring as it is not justified for *all* events, which will vary in size and nature. For instance, it would be absurd to require \$1,000,000 of general liability coverage for a candlelight vigil with 15 attendees and could even be cost-prohibitive.¹¹ The current policy’s insurance mandate makes no distinction between events like this and a music festival with 300 attendees. This provision violates not only the U.S. Constitution, but also the New Jersey Constitution, under which the New Jersey Supreme Court struck down a universal \$1,000,000 liability insurance requirement for leafletting and petitioning.¹²

Cost reimbursements

Applicants must also sign a use application which states: “Applicants shall be responsible for any and all cleanup of the Newton Green and returning the site to its original state. Failure to clean up the Newton Green, resulting in the County incurring costs for clean up, the Applicant shall be responsible to reimburse the County for costs incurred to clean up the site. . . . Should the Applicant or any attendee cause damage to the Newton Green, the Applicant shall be liable for the damage.”¹³ This requirement fails to expressly forbid the imposition of costs or penalties tied to audience hostility or counterdemonstrations—which officials often mistakenly treat as content-neutral criteria—and is thus unconstitutional in

Courts typically invalidate notice periods of 30 days, *see, e.g.*, *American-Arab Anti-Discrimination Comm.*, 418 F.3d at 605–08; *NAACP, W. Region v. City of Richmond*, 743 F.2d 1346, 1355–57 (9th Cir. 1984), and have upheld only the briefest of notice periods, typically a few days at most. *Sullivan*, 511 F.3d at 38 (citing cases upholding notice requirements of between one and three days).

⁹ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992); *E. Conn. Citizens Action Grp. v. Powers*, 723 F.2d 1050 (2d Cir. 1983) (invalidating \$750,000 insurance requirement for group seeking to protest on abandoned railway bed, as state offered no basis for amount).

¹⁰ *iMatter Utah v. Njord*, 774 F.3d 1258 (10th Cir. 2014) (Utah’s minimum requirement of \$1,000,000 per occurrence and \$2,000,000 in aggregate liability insurance for parade permit violated First Amendment because it was not tied to risk of specific parades based on objective characteristics like location, duration, and number of participants).

¹¹ See press release published by NJ 50501 concerning cancellation of an event due to its inability to secure proper insurance, available at https://www.reddit.com/r/newjersey/comments/1luztpd/no_july_5th_protest_on_the_newton_green_due_to/#lightbox.

¹² *Green Party v. Hartz Mt. Indus.*, 752 A.2d 315, 318 (N.J. 2000).

¹³ County of Sussex, *Use Application for Newton Green N.J.*, Rev. Sept. 2025, <https://www.sussex.nj.us/documents/Sussex%20County%20Newton%20Green%20Facility%20Use%20Application.pdf>.

inviting a “heckler’s veto” by imposing higher costs on applicants for events more likely to draw hostile reactions and accompanying property damage.¹⁴

The Board may recoup actual administrative costs, but only those based on “narrow, objective, and definite standards” unrelated to the event’s expressive content, which means they cannot be based on the reactions of third parties who object to the content.¹⁵ Speech “cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”¹⁶

The U.S. Court of Appeals for the Third Circuit—whose decisions bind the Board—struck down a nearly identical requirement for public event holders “to bear all costs of policing, cleaning up and restoring the park” and to “reimburse the City for any such costs incurred by the City,” which the court cites as particularly “offensive to the First Amendment” because an “applicant who signed the agreement required by the reimbursement provision would have no way of knowing the scope of the liability to which it might be subjecting itself.”¹⁷ The cost reimbursement provisions here suffer the same constitutional defects.

Waiver and indemnity requirement

Requiring applicants to sign a *Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement* poses the same constitutional issues. While it is unclear what language the release contains, an agreement broad enough to force speakers to assume indeterminate and unlimited financial risk, to indemnify the County for actions of third parties not in their control, or to assume liability risks not caused by their own conduct, is unconstitutional.

Several courts have held indemnification cannot be a condition of access to public fora and that governments cannot require applicants to indemnify the governing body for injuries caused by others not in their control, policing costs, crowd control, counter-demonstrator actions, or the government’s own negligence.¹⁸ To the extent the County incurs expenses due to destructive acts of third parties not in the applicant’s control, the County can serve its interests through less restrictive means such as imposing civil and criminal sanctions

¹⁴ *Nationalist Movement v. City of York*, 481 F.3d 178, 184, 186 (3d Cir. 2007); *see also Forsyth Cnty.*, 505 U.S. at 133 (invalidating security fee requirement for demonstrations and other public property uses because it vested unbridled discretion in government officials and authorized them to assess fees based on their “measure of the amount of hostility likely to be created by the speech based on its content”).

¹⁵ *Forsyth Cnty.*, 505 U.S. at 131; *Murdock v. Pennsylvania*, 319 U.S. 105, 113–14 (1943).

¹⁶ *Forsyth Cnty.*, 505 U.S. at 134; *see also Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 252 (6th Cir. 2018) (The “freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker’s message.”).

¹⁷ *Nationalist Movement*, 481 F.3d at 184, 186.

¹⁸ See *iMatter Utah*, 774 F.3d at 1258; *see also Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011 (9th Cir. 2009).

on wrongdoers.¹⁹ Notably, similar indemnification requirements in New Jersey have been successfully challenged.²⁰

Conclusion

FIRE urges the Board to repeal or amend the permit policy for use of the Green and to ensure that any future version is constitutionally compliant. Be advised that while the foregoing delineates the policy's constitutional defects under the U.S. Constitution, the New Jersey Constitution imposes an even higher bar to speech restrictions given that its "free speech provision is an affirmative right, broader than practically all others in the nation."²¹ We have worked with other local governing bodies nationwide to revise similar laws in ways that respect both First Amendment rights and legitimate government interests,²² and we would be glad to do so with the Board, at no cost.

We respectfully request a substantive response no later than January 16, 2026.

Sincerely,



Stephanie Jablonsky
Senior Program Counsel, Public Advocacy

¹⁹ See *iMatter Utah*, 774 F.3d at 1271 ("Utah has offered no evidence that its existing tort and criminal law is insufficient to regulate the behavior of the permittees").

²⁰ See Consent Order, *People's Org. for Progress v. Newark*, No. ESX-C268-04 (N.J. Sup. Ct. 2004) (enjoining Newark from enforcing indemnification or insurance requirements against plaintiffs for any march, vigil, or demonstration).

²¹ *Green Party*, 752 A.2d at 325 (citing *N.J. Coal. Against War in the Middle East v. J.M.B. Realty Corp.*, 650 A.2d 757, 779 (1994)).

²² See, e.g., Aaron Terr, *After FIRE's intervention, Florida city ditches unconstitutional restrictions on political protests*, FIRE (Jan. 25, 2024), <https://www.thefire.org/news/after-fires-intervention-florida-city-ditches-unconstitutional-restrictions-political-protests>.